(30,735)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1924

# No. 770

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CHANG CHAN, WONG HUNG KAY, YEE SIN JUNG, ET AL.

*vs.*

JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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INDEX


| | Original | Print |
|---|---|---|
| Certificate from the United States circuit court of appeals for the ninth circuit | 1 | 1 |
| Statement of facts | 1 | 1 |
| Questions certified | 5 | 4 |
| Judges' signatures | 5 | 4 |
| Clerk's certificate | 5 | 4 |


JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 18, 1924

[fol. 1] IN THE

# UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 4384

CHANG CHAN, WONG JUNG KAY, YEE SIN JUNG, and JING HING Wah, Petitioners, and Chan Shee, Kon Shee, Wong Shee, and Ng Yuet Seung, Detained, on Habeas Corpus, Appellants,

vs.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco, Appellee

Appeal from the United States District Court for the Northern District of California, Southern Division Thereof, Second Division

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit certifying certain questions or propositions of law to the Supreme Court of the United States under Section 293 of the Judicial Code

Before Gilbert, Hunt, and Rudkin, Circuit Judges

## STATEMENT OF FACTS

This action came to the Circuit Court of Appeals for the Ninth Circuit upon appeal from the judgment of the United States District Court for the Northern District of California, Southern Division thereof, Second Division, in favor of John D. Nagle, Commissioner of Immigration for the Port and District of San Francisco, respondent in the District Court, and against Chang Chan, Wong Jung Kay, Yee Sin Jung, Jin- Hing Wah, Chan Shee, Kon Shee, Wong Shee and Ng Yuet Seung, the petitioners and detained in the District Court, and the appellants before this Court.

The action was to release the detained petitioners of the restraint imposed by the appellee. The petition for habeas corpus was prayed for by the first four named appellants, and alleges that they are [fol. 2] each citizens of the United States, and that the last four named appellants are respectively their wives, who arrived at the Port of San Francisco on the SS President Lincoln July 11th, 1924, and sought the right of permanent admission into the United States upon the ground that each of them is the wife of one of the petitioners before the court, each of the latter being a citizen of this country and permanently domiciled therein, as in each instance specifically set forth in the petition. They were each awaiting a setting of their cases for trial by the Commissioner of Immigration and had the necessary witnesses all in readiness to appear for examination to establish their right of admission into the United States, each as the wife of a citizen of the United States and admis-

sible as such under the terms of the treaties between the United States and China and the Chinese Exclusion and Restriction Acts and the rules and regulations promulgated thereunder. The Commissioner of Immigration did not accord the contemplated hearing, but caused each of the said applicants, that is the wives, to be solely examined in her case before a Board of Special Inquiry, which thereupon denied each of them admission into the United States under the provisions of the Immigration Act of 1924, which became effective July 1st, 1924, and after the date of the respective marriages of appellants. No attempt was made to permit the husbands of these women a chance to be present or heard at said board hearing. An appeal was at once taken to the Secretary of Labor, where suitable protests and briefs were filed, after which the Secretary of Labor dismissed the appeal in each instance and affirmed the excluding decision. The excluding decisions were substantially the same in each case and by way of illustration that of Ng Yuet Seung, the last named appellant herein, will suffice; the ground for the Secretary's adverse ruling being as follows:

"This is the case of a young Chinese woman who arrived at the port of San Francisco on July 11th, 1924, after the present law had become effective, and seeks admission as the wife of a citizen. Neither the citizenship of the alleged husband, nor the relation-[fol. 3] ship of the applicant to him, has been investigated for the reason that even if it were conceded that both elements exist she would still be inadmissible, as Section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship, and the Department has no alternative than to recommend exclusion."

The petition alleges that there has been a misconstruction and a mistaken and wrongful interpretation of the Immigration Act of 1924, the effect of which has been to violate the treaty and statutory rights of appellants, as specifically recognized by the act itself, and said incorrect statutory construction violates and disregards the treaty, statutory and constitutional rights of appellants, who are citizens of the United States, and their wives who were and are persons of the Chinese race. The petition was supplementally amended by filing the original immigration records in the case of each of the detained, and as so amended the appellee interposed a general demurrer, which was sustained by the lower court on October 25th, 1924, who thereupon refused to issue the writ of habeas corpus, as prayed for, and denied the petition, after which the case was immediately appealed by the citizen husbands and their wives as appellants herein, and docketed in this Court.

The lower court in the case at bar disapproved the ground of rejection of the Secretary of Labor, holding that Chinese women ineligible to naturalization who had become and are the wives of citizens of the United States, were not entitled to admission under the terms of the Immigration Act of 1924, but bases his denial of the petition upon a ground not made by the Board of Special Inquiry at

the port, nor the Secretary of Labor on appeal, nor at the hearing before the lower court; the concluding portion of the decision of the lower court being as follows:

"I conclude therefore that it would have been the duty of the respondent in the case now under consideration to permit the petitioners to enter if their husbands, being citizens of the United States, had complied with the provisions of section 9 Subd. (b), (c) and (d), of the act by filing with the Commissioner General the petition therein specified, resulting in the issuance to said petitioners of an [fol. 4] immigration visa by the consular officer to whom application therefor had been made. But as it appears that no such proceedings were taken by or on behalf of the petitioners, they have not established their right to enter. The demurrer to the petition is therefore sustained."

The wives in detention were upon the high seas en route to the United States on July 1st, 1924, when the new Immigration Act became effective. The rules and regulations promulgated by the Commissioner General of Immigration, with the approval of the Secretary of Labor, on July 1st, 1924, No. 55263/General, Document No. 904, Chinese Rules and Regulations under the Immigration Act of 1924, conclude as follows:

"Under the new law no Chinese alien wife or alien child of the Chinese Race of an American citizen is admissible solely because of such relationship to such person."

And Document No. 922, issued by the same authority, provides in part as follows:

Immigration Quotas According to Nationality Proclaimed in Pursuance of the Immigration Act of 1924

These quotas are available only to aliens who are eligible to citizenship in the United States.

* * * * * * *

| | Annual quota |
|---|---|
| *China | 100* |

* * * * * * *

The same legal propositions upon behalf of other such applicants for admission were decided favorably to the petitioners by the United States District Court for the Western District of Washington at Seattle on September 23rd, 1924: In re Goon Dip et als. on habeas corpus; and before the United States District Court for the District of Massachusetts on October 17th, 1924: In re Chiu Shee on habeas corpus.

*For each of the Countries indicated by an asterisk (*) is established a nominal quota according to the minimum fixed by law. These nominal quotas, as in the case of all quotas hereby established, are available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States."

[fol. 5] The immigration visa mentioned was impossible of procurement by the appellants under the rules and regulations as stated, and would have been ineffective if presented under the Department's ruling of inadmissibility on account of race.

## Questions Certified

The questions of law concerning which the Circuit Court of Appeals for the Ninth Circuit desires instructions of the Supreme Court are:

1. Should the petitioners be refused admission to the United States either

(a) Because of the want of a visa; or

(b) Because of want of right of admission if found to be Chinese wives of American citizens.

Dated at San Francisco, California, November 17th, 1924.

Wm. B. Gilbert, Wm. H. Hunt, Frank H. Rudkin, Judges of the U. S. Circuit Court of Appeals for the Ninth Circuit.

## Clerk's Certificate

Endorsed: Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code. Filed November 17, 1924. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

Attest:

A true copy.

F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

[fol. 6] [Endorsed:] No. 4384. In the United States Circuit Court of Appeals for the Ninth Circuit. Chang Chan, Wong Jung Kay, Yee Sin Jung and Jing Hing Wah, petitioners, and Chan Shee, Kon Shee, Wong Shee, and Ng Yuet Seung, detained, on Habeas Corpus, appellants, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco. Appeal from the United States District Court of Appeals for the Northern District of California, Southern Division thereof, Second Division. Certified copy of certificate of the United States Circuit Court of Appeals for the Ninth Circuit, certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code.

Endorsed on cover: File No. 30,735. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 770. Chang Chan, Wong Hung Kay, Yee Sin Jung et al., (Certificate) vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco. Filed December 12th, 1924. File No. 30,735.

Original

No. 770

MAR 27 1925

WM. R. STANSBURY
CLERK

# In the Supreme Court

OF THE

## UNITED STATES

OCTOBER TERM, 1924

CHANG CHAN, WONG JUNG KAY, YEE SIN JUNG, and JIN HING WAH, Petitioners,

and

CHAN SHEE, KON SHEE, WONG SHEE, and NG YUET SEUNG, Detained on Habeas Corpus,

Petitioners and Appellants,

vs.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco,

Respondent and Appellee.

# BRIEF FOR PETITIONERS AND APPELLANTS


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## TABLE OF CONTENTS


| | Page |
|---|---|
| Statement of Facts | 2 |
| The Certified Question | 7 |
| Should the Petitioners have been Rejected for Want of an Immigration Visa? | 7 |
| The Immigration Act as Affecting the Issue in this Case | 10 |
| Committee Reports and Statements of Chairmen Showing Intent of Congress | 18 |
| Decisions of Lower Courts as to Right of Admission of Chinese-Born Wives of American Citizens | 19 |
| Status of Chinese Wife of American-Born Citizen Under Immigration Act of 1924 | 28 |
| General Considerations | 31 |
| Conclusion | 31 |
| Summary | 33 |


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| | |
|---|---|
| Immigration Act of 1924 | 10, 15, 20 |
| Report of Committee on Immigration and Naturalization, Nos. 176 and 350 | 18, 20 |
| Congressional Records, Vol. 65, pp. 5852-3 | 18 |
| " " " 65, p. 5671 | 19 |
| " " " 65, p. 5696 | 19 |
| " " " 65, p. 5865 | 19 |
| " " " 65, p. 5851 | 26 |


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| | Page |
|---|---|
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| *Chew Heong* vs. *United States*, 112 U. S., p. 536 | 21 |
| *Chiu Shee*, 1 Fed. (2d), p. 798 | 21, 26 |
| *Chung Toy Ho*, 42 Fed., p. 398 | 10 |
| *Holy Trinity Church* vs. *United States*, 143 U. S., 457 | 21, 23, 26 |
| *Lau Ow Bew* vs. *United States*, 144 U. S., p. 47 | 23, 26 |
| *Leong Yick Dew, In re*, 19 Fed., p. 490 | 8 |
| *Looe Shee* vs. *North*, 170 Fed., p. 566 | 28 |
| *Low Wah Suey* vs. *Backus*, 225 U. S., p. 460 | 29 |
| *Mackenzie* vs. *Hare*, 239 U. S., p. 299; 36 Sup. Ct., p. 106; 60 L. Ed., p. 297; Ann. Cas., 1916E, p. 645 | 29 |
| *Maynard* vs. *Hill*, 125 U. S., p. 211, 217; 8 Sup. Ct., p. 723; 31 L. Ed., p. 654 | 30 |
| *Tsoi Sim* vs. *United States*, 116 Fed., pp. 920, 923 | 8, 10, 22, 28, 29 |
| *Tinker* vs. *Colwell*, 193 U. S., 473; 24 Sup. Ct., 505; 48 L. Ed., 754 | 30 |
| *United States* vs. *Gue Lim*, 176 U. S., p. 459 | 10, 21 |
| *United States* vs. *Wong Kim Ark*, 169 U. S., p. 649 | 21 |

# In the Supreme Court

OF THE

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OCTOBER TERM, 1924

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CHANG CHAN, WONG JUNG KAY, YEE SIN JUNG, AND JIN HING WAH, *Petitioners,*

and

CHAN SHEE, KON SHEE, WONG SHEE, AND NG YUET SEUNG, DETAINED ON HABEAS CORPUS,
*Petitioners and Appellants.*

vs.

JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO,
*Respondent and Appellee.*

No. 770

---

## BRIEF FOR PETITIONERS AND APPELLANTS

## STATEMENT OF FACTS

This action went to the Circuit Court of Appeals for the Ninth Circuit upon appeal from the judgment of the United States District Court for the Northern District of California, Southern Division thereof, Second Division, in favor of John D. Nagle, Commissioner of Immigration for the Port and District of San Francisco, respondent in the District Court, and against Chang Chan, Wong Jung Kay, Yee Sing Jung, Jin Hing Wah, Chan Shee, Kon Shee, Wong Shee and Ng Yuet Seung, the petitioners and detained in the District Court, and the petitioners and appellants before this Court.

The action was to relieve the detained petitioners of the restraint imposed by the appellee. The petition for habeas corpus was prayed for by the first four named appellants, and alleges that they are each citizens of the United States, and that the last four named appellants are respectively their wives who arrived at the port of San Francisco on the S. S. President Lincoln, July 11, 1924, and sought the right of permanent admission into the United States upon the ground that each of them is the wife of one of the petitioners before the court, each of the latter being a citizen of this country and permanently domiciled therein, as in each instance specifically set forth in the petition. They were each awaiting a setting of their cases for trial by the Commissioner of Immigration and had the necessary witnesses all in readi-

ness to appear for examination to establish their right of admission into the United States, each as the wife of a citizen of the United States and admissible as such under the terms of the treaties between the United States and China and the Chinese Exclusion and Restriction Acts, and the rules and regulations promulgated thereunder. The Commissioner of Immigration did not accord the contemplated hearing, but caused each of the said applicants, that is the wives, to be solely examined in her case before a board of special inquiry, which thereupon denied each of them admission into the United States under the provisions of the Immigration Act of 1924, which became effective July 1, 1924, and after the date of the respective marriages of appellants. No attempt was made to permit the husbands of these women a chance to be present or heard at said board hearing. An appeal was at once taken to the Secretary of Labor, where suitable protests and briefs were filed, after which the Secretary of Labor dismissed the appeal in each instance and affirmed the excluding decision. The excluding decision was substantially the same in each case, and by way of illustration that of Ng Yuet Seung, the last-named appellant herein, will suffice, the ground for the Secretary's adverse ruling being as follows:

> "This is the case of a young Chinese woman who arrived at the port of San Francisco on July 11, 1924, after the present law had become effective, and seeks admission as the wife of a citizen.

> Neither the citizenship of the alleged husband, nor the relationship of the applicant to him, has been investigated for the reason that even if it were conceded that both elements exist she would still be inadmissible, as Section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship, and the department has no alternative than to recommend exclusion."

The petition alleges that there has been a misconstruction and a mistaken and wrongful interpretation of the Immigration Act of 1924, the effect of which has been to violate the treaty and statutory rights of appellants, as specifically recognized in the Act itself, and said incorrect statutory construction violates and disregards the treaty, statutory and constitutional rights of appellants, who are citizens of the United States, and their wives who were and are persons of the Chinese race. The petition was supplementally amended by filing the original immigration records in the case of each of the detained, and as so amended the appellee interposed a general demurrer, which was sustained by the lower court on October 25, 1924, which thereupon refused to issue the writ of habeas corpus, as prayed for, and denied the petition, after which the case was immediately appealed by the citizen husbands and their wives as appellants herein, and docketed in the Court of Appeals.

The lower court in the case at bar disapproved the

ground of rejection of the Secretary of Labor, and held that Chinese women ineligible to naturalization who had become and are the wives of citizens of the United States, are entitled to admission under the terms of the Immigration Act of 1924, but bases denial of the petition upon a ground not made by the Board of Special Inquiry at the port, nor the Secretary of Labor on appeal, nor at the hearing before the lower court, the concluding portion of the decision of the lower court being as follows, 2 F. (2d) 995:

> "I conclude therefore that it would have been the duty of the respondent in the case now under consideration to permit the petitioners to enter if their husbands, being citizens of the United States, had complied with the provisions of Section 9, Subd. (b), (c) and (d), of the Act by filing with the Commissioner-General the petition therein specified, resulting in the issuance to said petitioners of an immigration visa by the consular officer to whom application therefor has been made. But as it appears that no such proceedings were taken by or on behalf of the petitioners, they have not established their right to enter. The demurrer to the petition is therefore sustained."

The wives in detention were upon the high seas en route to the United States on July 1, 1924, when the new Immigration Act became effective. The rules and regulations promulgated by the Commissioner-General of Immigration, with the approval of the Secretary of Labor, on July 1, 1924, No. 55266/General, Document No. 904, Chinese Rules and Regula-

tions under the Immigration Act of 1924, conclude as follows:

> "Under the new law no Chinese alien wife or alien child of the Chinese race of an American citizen is admissible solely because of such relationship to such person."

And Document No. 922, issued by the same authority, provides in part as follows:

> **"IMMIGRATION QUOTAS ACCORDING TO NATIONALITY PROCLAIMED IN PURSUANCE OF THE IMMIGRATION ACT OF 1924. THESE QUOTAS ARE AVAILABLE ONLY TO ALIENS WHO ARE ELIGIBLE TO CITIZENSHIP IN THE UNITED STATES.**
>
> **Country or Area of Birth**
>
> | | Annual quota |
> |---|---|
> | *China | 100* |
>
> *For each of the countries indicated by an asterisk (*) is established a nominal quota according to the minimum fixed by law. These nominal quotas, as in the case of all quotas hereby established, are available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States."

The immigration visa mentioned was impossible of procurement by the appellants under the rules and regulations as stated, and would have been ineffective if presented under the department's rulings of inadmissibility on account of race.

## CERTIFIED QUESTION

Upon the foregoing statement of facts the Circuit Court of Appeals for the Ninth Circuit certified to this Court the following question:

1. Should the petitioners be refused admission to the United States either (a) because of the want of a visa; or (b) because of want of right of admission if found to be Chinese wives of American citizens?

As will be perceived, even in the event of an answer favorable to the petitioners the questions of the American citizenship of the husbands and the relationship of the wives remain to be passed upon by the lower courts.

## SHOULD THE PETITIONERS HAVE BEEN REJECTED FOR WANT OF AN IMMIGRATION VISA?

This, the first question arising under the certification of the Circuit Court of Appeals, we shall discuss but briefly, for the reason that we consider the whole case in its broader aspects as it arises under (b) of the certification, and such discussion lies at the bottom of the question of the necessity and effect of any visa. Nevertheless, there are certain considerations to be now invoked.

At the time the Immigration Act of 1924 went into effect in its fullness—July 1—the petitioners were on the high seas and the instructions of the Department of Labor were only on the point of issuance. There

was, therefore, a physical impossibility that the petitioners should comply with regulations that so far as they were concerned were in the womb of time when they departed from China. We may quote the Latin maxim: "Lex non cogit aut impossibilia aut inutilia." Surely impossibility and inutility are words directly applying in the present situation.

In principle the case of *Tsoi Sim* vs. *United States,* 116 Fed. 920, 923, directly applies as showing that the doing of a vain thing is to be avoided. In that case a Chinese woman laborer had not registered as required by law. She married an American citizen and immediately after was arrested as having been a non-registered Chinese laborer subject to deportation. The Court of Appeals for the Ninth Circuit then said:

> "If appellant was to be deported she would have the unquestioned right to immediately return, and would be entitled to land and remain in this country, upon the sole ground that she is the lawful wife of an American citizen."

The court, therefore, refused to deport a woman who might so easily and properly re-enter. We have the right to ask that these wives of American citizens, like Tsoi, should not be made the victims of vain formality.

So also the case of *In re Leong Yick Dew* (19 Fed. 490), decided by the Circuit Court for the District of California, February 25, 1884, in which was involved the construction of a portion of the first Chi-

nese Exclusion Act of May 6, 1882, wherein the court held as follows:

> "Again, the same section which required the certificate gives to the departing Chinese laborer an absolute, indefeasible right, without cost or expense, to have the certificate, in order that he may be able to produce it as evidence of his right to reenter the United States. The necessity to produce it, and the right to have it, in order that he may produce it, are correlative conditions. The one provision is the complement of the other. They are reciprocal, and must go together. The obligation to produce the certificate presupposes the practicability, or, at least, the possibility, of procuring it, in order that it may be produced. The two provisions go together, and form but one legal conception. The obligation to produce and the right and ability to obtain it are *dependent,* and *not independent,* conditions. One is the counterpart of the other, and it is not to be supposed that Congress would have adopted one branch of the proposition without the other, otherwise it would have distinctly done so in terms. If, then, it is impossible to comply with the condition, the impossible condition must be regarded as not intended as to this class of laborers; or if intended, it must be void. The law requires nothing impossible—*Lex non cogit ad impossibilia* (Bouv. Law Dict. "Maxims"; Broom, Max. 242) and *Lex non intendit aliquid impossibile* (Bouv. Law Dict.)—the law intends not anything impossible—are among the most venerable maxims of the law. In a statute, 'No text imposing obligations is understood to demand impossible things.' Sedg. St. Law, 191. * * *."

We have already set forth in the Statement of Facts the conditions surrounding the issuance of immigration visas, showing that even if application therefor had been possible, issuance would have been refused these petitioners. Surely, therefore, the petitioners should not be condemned to deportation, as they were by Judge Kerrigan, for not doing an act which, even if sought to be performed or if visa had been granted, would have meant nothing to the Department of Labor.

## THE IMMIGRATION ACT OF 1924 AS AFFECTING THE ISSUE IN THIS CASE

Under the heading of "non-quota immigrant" Section 4 provides that:

> "When used in this Act the term 'non-quota immigrant' means—
> (a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under Section 9."

Section 5, under the heading of "quota immigrants," provides that:

> "When used in this Act the term 'quota immigrant' means any immigrant who is not a non-quota immigrant. An alien who is not particularly specified in this Act as a non-quota immigrant or a non-immigrant shall not be admitted as a non-quota immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of

any other law regulating or forbidding immigration."

Section 8 provides that:

"A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a non-quota immigrant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a non-quota immigrant."

Section 9 (a) provides that:

"In case of any immigrant claiming in his application for an immigration visa to be a non-quota immigrant by reason of relationship under the provisions of subdivision (a) of Section 4, or to be entitled to preference by reason of relationship to a citizen of the United States under the provisions of section 6, the consular officer shall not issue such immigration visa or grant such preference until he has been authorized to do so as hereinafter in this section provided.

(b) Any citizen of the United States claiming that any immigrant is his relative, and that such immigrant is properly admissible to the United States as a non-quota immigrant under the provisions of subdivision (a) of section 4 or is entitled to preference as a relative under section 6, may file with the Commissioner-General a petition," etc.

Let us pass now to paragraph (e) of Section 9:

"If the Commissioner-General finds the facts stated in the petition to be true, and that the immigrant in respect of whom the petition is made is entitled to be admitted to the United States as a non-quota immigrant under subdivision (a) of

section 4 or is entitled to preference as a relative under section 6, he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to issue the immigration visa or grant the preference."

The only limitation discoverable in this section upon the right of entry of a wife of a citizen of the United States, or indeed, up to this time in the Act, is contained in the following paragraph which has no application to the cases now under consideration but which reads as follows:

"(f) Nothing in this section shall be construed to entitle an immigrant, in respect of whom a petition under this section is granted, to enter the United States as a non-quota immigrant, if, upon arrival in the United States, he is found not to be a non-quota immigrant."

Apparently the only purpose of clause (f) is to prevent the perpetration of a fraud on the part of someone not entitled to enter as a non-quota immigrant or not entitled at all to enter as a quota immigrant.

We turn next to Section 13 which in its subdivision (a) provides:

"No immigrant shall be admitted to the United States unless he * * * (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws."

We next come to clause (c) of Section 13:

> "No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivisions (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in Section 3."

For the purpose of explanation we recur to subdivisions (b), (d) and (e) of Section 4 and find that (b) covers immigrants previously lawfully admitted to the United States, returning from a temporary visit abroad, (d) certain immigrants entering for the purpose of carrying on the avocation of minister, college or other professor, and their wives and unmarried children accompanying or following them, and (e) student immigrants.

A study of the provisions we have cited shows that by clause (a) of Section 4, using the broadest language, the unmarried children under 18 years, or the wife, of an American citizen is a non-quota immigrant and we add whether she or the child be of Chinese or of any other race. As such it is the duty of the consular officer to issue a visa. The wife, for instance, does not have the right of entry because related to a non-quota immigrant or a non-immigrant, or because of being excepted from the operation of any other law regulating or forbidding immigration, as provided in

Section 5, but because she is the wife of an American citizen and her domicile is the domicile of her husband.

We find again under Section 8 that the consular officer, on satisfactory proof being furnished him that the applicant is entitled to be regarded as a non-quota immigrant, may issue an immigration visa to her.

Going further, in Section 9, clause (b), any citizen of the United States claiming her as his wife under provisions of subdivision (a) of Section 4, may file a suitable petition and under clause (e) of the same section the Commissioner-General finding the facts to be true and that she is entitled to be admitted to the United States as a non-quota immigrant under subdivision (a) of Section 4, shall inform the Secretary of State of his decision and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed, to issue it, the only limitation upon the right to enter, consequent upon such action, being that if she seeks to enter as a non-quota immigrant she shall not do so if, on arrival, she is not found to be that sort of immigrant, and so far as we are concerned that kind of immigrant must be the unmarried child under 18, or a wife, of a citizen of the United States, residing therein at the time of the filing of the petition.

A review of these sections and clauses shows beyond a peradventure that the right of Chinese wives of

American citizens to receive due authorization to enter the United States cannot be disputed, whatever debate may arise as to the effect of other portions of the Act.

We come now to Section 13 and in its clause (a) we find that the Chinese wife of an American citizen has a right to admission as a non-quota immigrant if specified in the visa in the immigration visa as such and otherwise admissible under the immigration laws, the latter clause finding its natural purpose in the provisions as to health and character of broad general nature.

We are next confronted with clause (c) of Section 13 prohibiting not the granting of visas, which in themselves recognize a right to admission, but prohibiting admission except under the provisions of subdivisions (b), (d), and (e) of Section 4 or because not an immigrant as defined in Section 3. The provisos (b), (d) and (e) we have before pointed out.

This course of analysis has brought us to a point of plain contradiction in the law. The right to admission has been fully recognized three or four times over through the provisos directing the granting of said visas and it is now argued that if a visa must be granted, and such right cannot be disputed, yet the wife of an American citizen leaving China in the high hope of accompanying or joining her husband is to be turned back on reaching an American port because "ineligible to citizenship." The two interpretations

cannot stand. The right to papers authorizing admission is as strong in itself, as stated in the statute, as any power of rejection because ineligible to citizenship can possibly be believed to be.

The result of this analysis brings us to a point where we must give weight to the purposes and intent of Congress. This we shall next show by the reports of the committees and the statements of the committee chairmen on the floor of the House. It is evident that they did not, at any moment, intend by this legislation to exclude from American soil the wife of any American citizen. In one section after another, in the most unqualified manner, and seeking only to establish the fact of relationship, we have seen that the purpose and intent of Congress not to sever the family relationships of American citizens was iterated and reiterated. With the opportunity before Congress in Sections 2, 4, 5, 6, 7, 8, and 9, the suggestion was never made that families were to be broken up because of a chance that a wife was ineligible to citizenship.

The only doubt or question which arises under the Act is because while in Section 13 express reference is made to subdivisions (b), (d) and (e) of Section 4, by some apparent slip no reference was made to subdivision (a) of Section 4 referring to the unmarried children under 18 years or the wife of a citizen of the United States.

That there was nothing but a slip and that the intent of Congress was unmistakably shown by all the prior

sections to which we have alluded is only made the stronger by reference to subdivisions (d) and (e). Under (d) we find that a Buddist missionary, or a Chinese instructor, with his wife and unmarried children may come into the United States and following his occupation remain here for the remainder of his life with his wife and children under 18 entering with or following him.

Can we believe that it was the purpose of Congress to throw wide open the doors of the United States to classes of men with their wives who may enter this country for the purposes, it may be, of profit or other gratification incident to the carrying on of their business, and refuse entry to the wife of an American citizen who is clearly entitled to a visa and who may be the mother of American citizens who are entitled to entry whatever their race or wherever born?

This is not a case, as it happens, of reading into the statute a provision or a clause which is not there, but one of giving full effect and meaning to provisions which are there and carrying out with relation to them the manifest and avowed intent of Congress.

## COMMITTEE REPORTS AND STATEMENTS OF CHAIRMEN SHOWING INTENT OF CONGRESS

In the two House Reports (No. 176 as of H. R. 6540, and No. 350 as of H. R. 7995) the Committee says:

> "The Bill • • • exempts wives, children under 18, and parents over 55, of American citizens."

Elaborating the statement the reports add:

> "In the bill provision is made for the admission without count in any quota of the fathers and mothers over 55 years of age, the husbands and wives, and the unmarried children under 18 years of age, of citizens of the United States."

On neither occasion in the reports is exception made of those of Asiatic origin.

While we may not look back to the debates to discover the intent of Congress (though they would help us) we can, in addition to the Committee Reports, cite the declarations of the Committee Chairmen. Thus doing, we find that on April 5, 1924, Chairman Johnson of the House Committee declared on the floor of the House (Congressional Record, Vol. 65, p. 5852) that one of the main purposes of the Bill was to prevent the separation of members of families. Many paragraphs, he says, have been provided "to reduce the hardships of those who come as immigrants" (p. 5843).

Senator Reed of Pennsylvania, author and manager

on the floor of the Senate of the Senate Bill, emphasized the humane objects of the measure (Record of April 3, 1924, Vol. 65, p. 5671). Senator Colt, then Chairman of the Senate Committee on Immigration, in explaining the purposes of the bill to the Senate on April 2, 1924, called attention to the general humanitarian objects which Congress had in view (Congressional Record, Vol. 65, p. 5596). Senator Spencer introduced an amendment, which was adopted, and which now forms the proviso to Section 14 of the law, permitting the Secretary of Labor to allow to remain permanently in the United States any alien child theretofore temporarily admitted, now in the United States, either of whose parents is a citizen of the United States (Cong. Record, Vol. 65, p. 6865).

## DECISIONS OF LOWER COURTS AS TO RIGHT TO ADMISSION OF CHINESE-BORN WIVES OF AMERICAN CITIZENS

The question involved in this case was first brought into court in the United States District Court of the Western District of the State of Washington, Northern Division, and was decided by Judge Neterer on September 23, 1924, in ex parte Goon Dip and others. 1 F. (2d) 811. Judge Neterer reviewed the treaty and statutory provisions as touching the matter of Chinese merchants and the decisions bearing thereon, including *Chung Toy Ho,* 42 Federal, 398; *United States* vs. *Gue Lim,* 176 U. S., 459; and *Tsoi Sim* vs. *United*

*States,* 116 Fed., 920; thereafter calling particular attention to the majority report of the Committee on Immigration and Naturalization in which it was said:

> "The bill * * * exempts wives, children under 18 * * * of American citizens."

After reviewing Section 25 and Section 28 (g) of the Immigration Act of 1924 and the definition of a non-immigrant in Section 3 containing the exception (6),

> "an alien entitled to enter the United States solely to carry on trade under and in pursuance to the provisions of a present existing treaty of commerce and navigation,"

the Court concludes that the wives and minor children were clearly not immigrants. Referring to the proviso of Section 13,

> "(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien * * * (3) is not an immigrant as defined in Section 3,"

the Court calls attention to the fact that the Courts for more than a generation have construed Art. II of the treaty to read,

> "Chinese merchants * * * together with their body and household servants, ***wives and minor children,*** shall be allowed to go and come. * * *."

The Judge concludes that the report of the Committee and the express provisions of the Act clearly show the intent of Congress not to disturb the relations existing under the prior laws. He considers that the act, the treaty and immigration laws, the judicial construction of the treaties and law and departmental construction, must all be considered together and, so regarding it, the Court would be slow to assume that Congress intended to treat the treaty as a "scrap of paper." The Judge at this point cites *Chew Heong* vs. *United States,* 112 U. S., 536; *United States* vs. *Gue Lim, supra.* He therefore directed the writ to issue.

In the case of Chiu Shee before Judge Lowell of the District Court of the United States for Massachusetts, the same conclusion was reached. 1 F. (2d) 798. The Judge thought that a casual reading of the statute would show that the writ would have to be denied, but adopting the attitude toward such legislation of the Supreme Court of the United States, in the leading case of *Holy Trinity Church* vs. *United States,* 143 U. S., 457, arrived at a contrary conclusion. He felt that the result desired by the passage of the act would not be furthered by prohibiting a wife from joining her husband who was a citizen of the United States by virtue of birth, citing *United States* vs. *Wong Kim Ark,* 169 U. S., 649, and that such prohibition would make the American citizen discontented with his American citizenship, being deprived of the society

of his wife to which he was entitled. *Tsoi Sim* vs. *United States,* 116 Fed., 920, and cases cited.

Scrutinizing the provisions of the Act he found they were inconsistent one with another, section 4 relating to non-quota immigrants referring to

> "an immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9,"

with clause (c) of Section 13, providing that

> "no alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivisions (b), (d), or (e) of section 4, or," etc.

He noted that in this part of Section 13, reference to subdivision (a) of Section 4 was not included and on such omission the assumption was based Congress forbade the entry of the wives of American citizens if they be not eligible to naturalization. This contention, he thought, rested upon an insecure foundation, and arose from a literal construction of the Act without seeking to ascertain its meaning. He thought that the result of such a construction would be that Congress showed more solicitude for the welfare of alien ministers or professors whose wives were allowed to enter than for American citizens and such result would be absurd and that the Act was not to be so construed as to lead to absurdities. This on authority of

*Lau Ow Bew* vs. *United States,* 144 U. S., 47, and *Holy Trinity Church* vs. *United States, supra.* Nor did he think such a construction necessary. He felt that in considering Section 13 Congress had only aliens in mind and did not realize that the section, as passed, diminished the rights of American citizens already carefully safeguarded in Section 4 (a). The reason why the inconsistency was overlooked was that the report of the House Committee stated specifically that wives of American citizens were exempted and the Chairman of the Committee emphasized that feature of the Bill (Cong. Record 565, No. 93, p. 5851). In this manner the discrepancy was overlooked. He construed later provisions (Section 13 (c)) as applying only to aliens not related to American citizens. He followed expressly the decision of Judge Neterer insofar as it related to the case at bar.

After citing numerous cases in the Supreme and other Federal Courts where the Court had interpreted the statutes liberally in favor of immigrants he directed the discharge of the petitioner.

In the instant case Judge Kerrigan, 2 F. (2d) 995, held as follows:

> "As to case No. 18417, it has already been stated that the Secretary of Labor dismissed the appeal of petitioners upon the ground that being aliens ineligible to citzenship, although the wives of American citizens of the Chinese race, they were excluded by section 13 of the Immigration Act.
>
> "It is of course apparent that the object of the act under consideration was to restrict the immi-

gration of aliens to an extreme degree; but it is equally clear that that object is not thwarted or its attainment even menaced by the admission of the wife and children ineligible to citizenship of an American citizen. Such cases must of necessity be comparatively rare, and must as the natural effect of existing legislation on the subject tend to become more so. Moreover, the act itself manifests a purpose to admit aliens who are the wives or children of American citizens, even though by their admission the number of aliens admitted from the country from which they come is thereby caused to exceed the quota prescribed for that country. And the act goes so far (sec. 4 subd. (d)) as to admit the alien wife and children ineligible to citizenship of an alien also ineligible to citizenship if he has entered or seeks to enter for the purpose of carrying on the avocation of a minister of religion or professor at a college, academy, seminary or university, thus plainly manifesting an intent not to disrupt family life even though its realization entails the admission of individuals belonging to a class not eligible to citizenship.

"The exclusion of persons ineligible to citizenship is accomplished under the act by section 13, subd. (c), which provides: 'No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the subdivisions (b), (d) or (e) of section 4, or (2) is the wife or unmarried child under 18 years of age of an immigrant admissible under such subdivision (d) and is accompanying him or following to join him, or (3) is not an immigrant as defined in section 3.'

"It will be seen by reference to the subdivisions or sections mentioned that all aliens ineligible to citizenship are thus excluded except (1) an immigrant previously lawfully admitted to the United States who is returning from a temporary visit

abroad; (2) an immigrant who continuously for at least two years preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the avocation of minister of any religious denomination, or professor of a college, academy, seminary or university, and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him; (3) an immigrant who is a bona fide student of at least 15 years of age who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary or university, particularly designated by him and approved by the Secretary of Labor; (4) a government official, his family, attendants, servants and employees; (5) an alien visiting the United States temporarily for business or pleasure; (6) an alien in continuous transit throughout the United States; (7) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory; (8) a bona fide alien seaman serving as such upon a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in pursuit of his calling as a seaman, and (9) an alien entitled to enter the United States under and in pursuance of the provisions of an existing treaty of commerce and navigation.

"I have already referred to subd. (a) of section 4, which allows to enter even in excess of the quota the alien wife or unmarried child under 18 years of age of a citizen of the United States, the term 'alien' of course including both those eligible and ineligible to citizenship.

"Although under the broad terms of section 13, subd. (c) of the act the wife ineligible to citizenship of an American citizen is excluded by reason

of not being included within the specific exceptions contained in that section, I cannot believe that it was the intention of Congress to exclude such person in view of the other provisions of the act referred to bearing upon the subject. To admit an alien teacher or minister of religion ineligible to citizenship, and their wives and minor children, also ineligible, and to exclude the wife of an American citizen solely by reason of a like ineligibility, is so inconsistent and unreasonable that it is impossible to believe that Congress intended it. As said by Judge Lowell, U. S. District Judge for the District of Massachusetts, in the case of *In re Chiu Shee,* upon this precise point (opinion filed October 17, 1924): 'The result of such a construction would be that Congress showed itself more solicitous for the welfare of an alien minister or professor, whose wife is allowed to enter, than for that of American citizens. Such a result would be absurd, and we are told by the highest authorities that an Act of Congress should not be so construed as to lead to absurdities (*Lau Ow Bew* vs. *U. S.,* 144 U. S., 47; *Holy Trinity Church* vs. *U. S.,* 143 U. S., 457, and cases cited).' Moreover, as pointed out by Judge Lowell in the case cited, when the bill resulting in this legislation was reported to the House the report of the House Committee stated specifically that wives of American citizens were exempted from the exclusion provisions of the bill (Congressional Record, Vol. 65, No. 93, p. 5851); and the discrepancy between section 4 (a) and section 13 (c) can be reconciled by construing the latter as applying only to aliens who are not the wives of American citizens.

"I conclude therefore that it would have been the duty of the respondent in the case now under consideration to permit the petitioners to enter if their husbands, being citizens of the United States, had complied with the provisions of section 9,

subd. (b), (c) and (d), of the act by filing with the Commissioner General the petition therein specified, resulting in the issuance to said petitioners of an immigration visa by the consular officer to whom application therefor had been made. But as it appears that no such proceedings were taken by or on behalf of the petitioners, they have not established their right to enter. The demurrer to the petition is therefore sustained."

Judge Kerrigan refused, as is shown, to discharge the petitioners because their husbands, being citizens of the United States, had not complied with the provisions of Section 9 (b), (c) and (d) of the Act by filing with the Commissioner-General the petition therein specified. Under apparently like conditions, Judges Lowell and Neterer failed to give any weight or attention to the theory on which Judge Kerrigan refused the writ to these petitioners.

We have pointed out in the statement of the case that under the rulings and regulations promulgated by the Commissioner-General, the Department of Labor had laid down the rule that no Chinese alien wife or alien child of the Chinese race of an American citizen was admissible solely because of such relationship to such person. It therefore plainly appeared that any application for certificate would have been refused under the direction of the Department of Labor and the non-doing of a vain act as we have shown, cannot well be accepted as a reason for the denial of a recognized right.

It is notable that each of the three trial judges before whom the question in these cases has been tried out found little difficulty in deciding to follow the spirit and intent of Congress rather than what they regarded as a faulty expression of the meaning of that body.

There was, therefore, left to us little more than to restate the argument as we saw it and to ask that in this connection the Court consider the more elaborate argument upon general principles contained in our Brief No. 769 hereto attached.

## STATUS OF CHINESE WIFE OF AMERICAN-BORN CITIZEN BEFORE IMMIGRATION ACT OF 1924

The status of the Chinese wives of American-born citizens before the passage of the Immigration Act of 1924 deserves a moment's consideration. In a few words it may be said that on none of the few occasions when the power of the Court was invoked did the Court doubt that the domicile of the husband was that of the wife, and that, save for some consideration of health or conduct on her part, the right of the wife to join her husband was complete.

This was true in the case of *Tsoi Sim* vs. *United States*, 116 Fed., 920, when deportation of a Chinese wife was stayed in view of her marriage even after facts had arisen justifying her deportation had she not been the wife of an American citizen.

In *Looe Shee* vs. *North*, 170 Fed., 566, the right

of entry of the Chinese wife of an American citizen was recognized, and in *Low Wah Suey* vs. *Backus,* 225 U. S., 460, such right seems to have been tacitly conceded.

In the *Tsoi Sim* case the right of domicile was an important factor: "By virtue of their marriage her husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country." The right to become naturalized is, of course, an entirely different thing and not to be confused with rights and privileges incident to the marital state.

In the *Tsoi Sim* case the Court of Appeals also uses the following language:

> "By this act her status was changed from that of a Chinese laborer to that of a wife of a native-born American. Her husband is not before this Court, but his rights, as well as hers, are involved. * * * On the contrary, the native born, by virtue of his birth, becomes a citizen of the United States, and is entitled to greater rights and privileges than the alien merchant. The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of the marriage relations. These are hers, as well as his, natural rights. By virtue of her marriage, her husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country."

In *Mackenzie* vs. *Hare,* 239 U. S., 299; 36 Sup. Ct., 106; 60 L. Ed., 297; Ann. Cas., 1916E, 645, it was held that identity of husband and wife is an ancient

principle of our jurisprudence. In *Tinker* vs. *Colwell,* 193 U. S., 473, 484; 24 Sup. Ct., 505; 48 L. Ed., 754, it was said of the exclusive right of the husband to marital intercourse and to beget his own children: "This is a right of the highest kind, upon the thorough maintenance of which the whole social order rests, and in order to the maintenance of the action it may properly be described as a property right." In *Anderson* vs. *Watt,* 130 U. S., 695, 706; 11 Sup. Ct., 449, 452; 34 L. Ed., 1078, it was held: "Whatever her citizenship, the domicile of the husband is that of the wife," and see cases cited therein. In *Maynard* vs. *Hill,* 125 U. S., 211, 217; 8 Sup. Ct., 723; 31 L. Ed., 654, it was held: "When the contract to marry is executed by the marriage, a relation is created which they cannot change."

Under the law and the decisions as they stood up to July 1, 1924, there could have been no doubt as to the right of admission to the United States of the petitioners, and the burden rests upon the Government of showing that the Act manifests a clear intent to change this condition.

## GENERAL CONSIDERATIONS

In our Brief in No. 769 we have sought to show among other things that in passing the Act before us for consideration it was not the intent of Congress to legislate out of existence the Chinese Immigration laws, but rather to keep them in full operative effect, limiting the operations of the Act to the new field designed to be covered, that is Asiatics not embraced in the Chinese Immigration laws. This interpretation gives vigor to all existing acts and likewise gives full play to the new clauses of the Immigration Act. Accepting this view we have retained the old Chinese Exclusion laws and their well established interpretations, under which the petitioners would be entitled to admission now as formerly.

## CONCLUSION

Before finally concluding this brief we feel constrained to say that we should not submit this matter without strongly emphasizing the fact that the husbands of the women in whose behalf the writs of habeas corpus in these matters are sought are citizens of the United States *permanently residing and domiciled therein,* and that their rights as such citizens are before this Court as petitioners and appellants, and that to hold that these women are debarred from admission to the United States under the Immigration Act of 1924 means that their husbands are to be permanently separated from them unless they abandon

the country of their birth and citizenship, and take up their residence in some other land which permits their wives to reside with them. The right of the husband to have the companionship of his wife is a natural right inherent not only in civilized, but even in savage society, and is founded upon those undying and unalterable natural laws and considerations upon which society itself rests, and goes back to the days when Eve was placed in the Garden of Eden, there to dwell with Adam, because the Lord felt that it was not good for man to be alone. We cannot believe that Congress intended to abrogate that right, particularly with respect to citizens of this country, and to compel them to choose between a permanent separation from their wives or that practical abandonment of their citizenship which is involved in a permanent residence abroad. The considerations involved here are different than in a case where the husband is an alien. The alien's residence here, because of his foreign citizenship, may be looked upon as more or less temporary, but with the citizen the case is different. His residence is here in the country of his citizenship and where he has a natural, inherent and constitutional right to reside. To say to him that his wife is not admissible here is to compel him to choose between his citizenship and its obligations on the one hand, and his natural duty to his wife and to himself as a husband on the other.

Any construction of the Immigration Act of 1924

which would lead to such consequences is certainly, we would submit, to be avoided as manifestly not being the intent of Congress, and it can be avoided by giving full effect to Section 4 of the act, the specific section dealing specifically with the wives of citizens, and providing for their admission, as of controlling persuasion over a literal construction of the language of Section 13, which is general in its nature, and should give way, if there be any conflict between the two sections, to the specific section which deals specifically with that specific matter. It should be borne in mind that all of the marriages here involved antedate the passage of the Immigration Act of 1924, and, therefore, it cannot be intimated that the relationship was assumed to avoid the provisions of that act.

## SUMMARY

Let us sum up some of the more important points of the argument:

1. The petitioners should not have been rejected for the want of an immigration visa, the same being impossible of procurement under the Department's action and unavailing on its view even if obtained.

2. The Immigration Act of 1924 contemplated the granting of immigrant visas to the wives and children of American citizens irrespective of race, and so granting them could not be so interpreted as to compel the rejection of their bearers or of those enti-

tled to them if their issuance had been possible or permitted by regulation when appearing at an American port. The two propositions of being given or being entitled to visa and of subsequent refusal of entry are so inconsistent that the intent of Congress must be sought to discover the meaning of the Act.

3. The Committee reports and the expressions of views on the part of Chairmen show that it clearly was not the intention of Congress to keep out the wife of an American citizen on account of race or criteria other than those which extend to aliens generally.

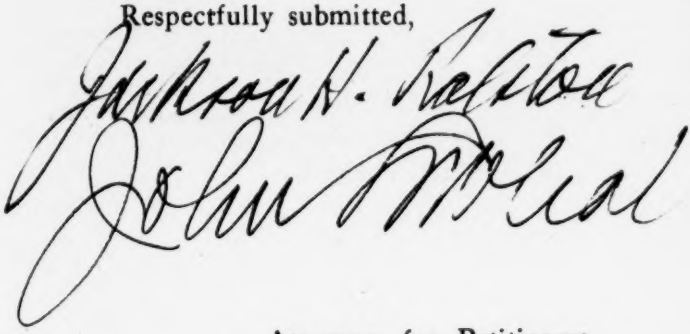
4. We have pointed out that until the passage of the present Act there was no pretense of authority for turning back from American ports the Chinese wife of an American citizen, and that the burden was upon the Government to show the clear intent of Congress to change this rule.

5. We have made the Brief in No. 769 a part of this Brief for the express purpose among other things of showing that Congress has not repealed the Chinese laws and that under them and their interpretation the petitioners are entitled to enter.

We have, therefore, to submit that the questions certified to this Court should each be answered in the negative—that is to say, that the petitioners should not have been denied "Because of the want of a visa," and that they should not have been denied, "Because of

want of right of admission if found to be Chinese wives of American citizens."

Respectfully submitted,



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# INDEX


| | Page |
|---|---|
| Statement | 1–3 |
| Statutes involved | 3–11 |
| Argument | 11–21 |
| Synopsis of Argument: | |
| I. The appellants (wives) in this case are aliens ineligible to citizenship, despite their marriage to citizens | 11–12 |
| II. They are therefore barred from this country by section 13(c) of the Immigration Act of May 26, 1924, c. 190 (43 Stat. 153, 162). They do not come within any of the nine exceptions to that section | 12–13 |
| III. Sections 4(a) and 6(a) of that Act do not confer any right of entry to persons excluded under section 13(c) | 13–15 |
| IV. Statements of Committee Members show that Congress intended to exclude persons having the status of the present appellants | 15–16 |
| V. Nine exceptions are enumerated in Section 13(c). The courts can not add a tenth | 16–17 |
| VI. The argument of hardship can not prevail against the clear language of the Act | 17–19 |
| VII. Even if these appellants are otherwise admissible, they must be excluded because of their failure to obtain the immigration visas required by the Act | 19–20 |
| VIII. Both of the questions certified should be answered in the affirmative | 20–21 |


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| | |
|---|---|
| *Bank of Alabama* v. *Dalton*, 9 How. 522, 529 | 17 |
| *Chan Shee, ex parte* (the present case had this name in the District Court), 2 F. (2nd) 995, 998 | 2 |
| *Chung Fook* v. *White*, 264 U. S. 443, 446 | 19 |
| *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310 | 19 |
| *Lapina* v. *Williams*, 232 U. S. 78, 92 | 17 |
| *Low Wah Suey* v. *Backus*, 225 U. S. 460, 476 | 14 |
| *McIver* v. *Ragan*, 2 Wheat. 25, 29 | 17 |
| *St. Louis and Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281, 295 | 18 |
| *United States* v. *First National Bank*, 234 U. S. 245, 260 | 18 |
| *United States* v. *Goldenberg*, 168 U. S. 95, 103 | 17 |
| *Yee Won* v. *White*, 256 U. S. 399 | 19 |

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| Revised Statutes: | Page |
|---|---|
| 1994 | 11 |
| 2169 | 10, 11, 16 |
| **Statutes at Large:** | |
| Act of May 6, 1882, c. 126, s. 14 (22 Stat. 58, 61) | 11 |
| Act of Sept. 22, 1922, c. 411, s. 2 (42 Stat. 1021, 1022) | 11 |
| Act of May 26, 1924, c. 190 (43 Stat. 153) (Immigration Act of 1924): | |
| S. 2 | 3, 14, 19 |
| S. 3 | 4, 12, 13 |
| S. 4 | 4, 12, 13, 14, 15, 19 |
| S. 5 | 5, 14 |
| S. 6 | 6, 13, 14, 15, 19 |
| S. 8 | 6, 19 |
| S. 9 | 2, 6, 14, 19 |
| S. 13 | 2, 9, 12, 13, 14, 15, 20 |
| S. 25 | 9, 14 |
| S. 28 | 10 |
| S. 31 | 20 |


## OTHER CITATIONS


| Congressional Record (68th Congress, 1st session): | |
|---|---|
| Vol. 65, part 8, p. 8229 | 16 |
| Vol. 65, part 9, p. 8639 | 16 |

# In the Supreme Court of the United States

OCTOBER TERM, 1924

CHANG CHAN ET AL., APPELLANTS
*v.*
JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO, APPELLEE | No. 770

*ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF ON BEHALF OF THE APPELLEE

### STATEMENT

The four first-named appellants are citizens of the United States, of Chinese descent, who are domiciled in the United States. In this proceeding they are seeking to obtain, by *habeas corpus,* the release of their wives, the four last-named appellants, who are now detained by the appellee, Commissioner of Immigration at San Francisco.

The wives, on whose behalf relief is sought, are Chinese subjects. They arrived at San Francisco from China on July 11, 1924, and were refused admission to this country, under the provisions of the

Immigration Act of 1924 (Act of May 26, 1924, c. 190, 43 Stat. 153). The appellee based his action upon section 13 (c) of that Act, and held that the wives were mandatorily excluded as persons ineligible to citizenship. For this reason he declined to grant them a hearing as to the fact of their marriage or as to the citizenship of their husbands, holding that the wives must be excluded in any event, even though the existence of the marriage relation and the citizenship of the husbands were proved. This decision was affirmed by the Secretary of Labor on appeal.

Relief was then sought by *habeas corpus* in the District Court for the Northern District of California. That court, on October 25, 1924, decided that the wives were rightly excluded; its decision, however, was based upon a different ground from that taken by the immigration authorities—upon the ground, namely, that the husbands had failed to make the applications required by section 9 of the Immigration Act of 1924, and the wives had failed to obtain the required immigration visas. The opinion of the District Court is reported, sub nom. *Ex parte Chan Shee*, in 2 F. (2nd) 995, second case, beginning at page 998.

From the District Court an appeal was taken to the Circuit Court of Appeals, which has certified, for the determination of the Supreme Court, the following questions:

> Should the petitioners [the wives] be refused admission to the United States either—
>
> (*a*) Because of the want of a visa, or
>
> (*b*) Because of want of right of admission if found to be Chinese wives of American citizens.

On behalf of the appellee it is submitted that these questions are answered by the clear and unequivocal language of the Act, and that the appellants must in either case be excluded from the United States.

Consideration of question (*a*) above as to the want of a visa will be postponed until after the discussion of question (*b*), which involves the principal point in the case.

## STATUTES INVOLVED

The principal statute with which we are concerned is the Immigration Act of May 26, 1924, c. 190 (43 Stat. 153). This Act is hereafter cited as the Act of 1924.

The relevant provisions of that Act are as follows:

> SEC. 2 (g). Nothing in this Act shall be construed to entitle an immigrant, to whom an immigration visa has been issued, to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws. The substance of this subdivision shall be printed conspicuously upon every immigration visa.

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

SEC. 4. When used in this Act the term "non-quota immigrant" means—

(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9;

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad;

(c) An immigrant who was born in the Dominion of Canada, Newfoundland, the Republic of Mexico, the Republic of Cuba,

the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him;

(d) An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under 18 years of age, if accompanying or following to join him; or

(e) An immigrant who is a bona fide student at least 15 years of age and who seeks to enter the United States solely for the purpose of study at an accredited school, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to report to the Secretary of Labor the termination of attendance of each immigrant student, and if any such institution of learning fails to make such reports promptly the approval shall be withdrawn.

SEC. 5. When used in this Act the term "quota immigrant" means any immigrant who is not a non-quota immigrant. An alien who is not particularly specified in this Act as a non-quota immigrant or a non-immigrant shall not be admitted as a non-quota

immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration.

SEC. 6. (a) In the issuance of immigration visas to quota immigrants preference shall be given—

(1) To a quota immigrant who is the unmarried child under 21 years of age, the father, the mother, the husband, or the wife, of a citizen of the United States who is 21 years of age or over * * *.

SEC. 8. A consular officer may, subject to the limitations provided in sections 2 and 9, issue an immigration visa to a non-quota immigrant as such upon satisfactory proof, under regulations prescribed under this Act, that the applicant is entitled to be regarded as a non-quota immigrant.

SEC. 9. (a) In case of any immigrant claiming in his application for an immigration visa to be a non-quota immigrant by reason of relationship under the provisions of subdivision (a) of section 4, or to be entitled to preference by reason of relationship to a citizen of the United States under the provisions of section 6, the consular officer shall not issue such immigration visa or grant such preference until he has been authorized to do so as hereinafter in this section provided.

(b) Any citizen of the United States claiming that any immigrant is his relative, and that such immigrant is properly ad-

missible to the United States as a non-quota immigrant under the provisions of subdivision (a) of section 4 or is entitled to preference as a relative under section 6, may file with the Commissioner General a petition in such form as may be by regulations prescribed, stating (1) the petitioner's name and address; (2) if a citizen by birth, the date and place of his birth; (3) if a naturalized citizen, the date and place of his admission to citizenship and the number of his certificate, if any; (4) the name and address of his employer or the address of his place of business or occupation if he is not an employee; (5) the degree of the relationship of the immigrant for whom such petition is made, and the names of all the places where such immigrant has resided prior to and at the time when the petition is filed; (6) that the petitioner is able to and will support the immigrant if necessary to prevent such immigrant from becoming a public charge; and (7) such additional information necessary to the proper enforcement of the immigration laws and the naturalization laws as may be by regulations prescribed.

(c) The petition shall be made under oath administered by any individual having power to administer oaths, if executed in the United States, but, if executed outside the United States, administered by a consular officer. The petition shall be supported by any documentary evidence required by regulations prescribed under this Act. Appli-

cation may be made in the same petition for admission of more than one individual.

(d) The petition shall be accompanied by the statements of two or more responsible citizens of the United States, to whom the petitioner has been personally known for at least one year, that to the best of their knowledge and belief the statements made in the petition are true and that the petitioner is a responsible individual able to support the immigrant or immigrants for whose admission application is made. These statements shall be attested in the same way as the petition.

(e) If the Commissioner General finds the facts stated in the petition to be true, and that the immigrant in respect of whom the petition is made is entitled to be admitted to the United States as a nonquota immigrant under subdivision (a) of section 4 or is entitled to preference as a relative under section 6, he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to issue the immigration visa or grant the preference.

(f) Nothing in this section shall be construed to entitle an immigrant in respect of whom a petition under this section is granted, to enter the United States as a nonquota immigrant, if, upon arrival in the United States, he is found not to be a nonquota immigrant.

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

* * * * *

(c) *No alien ineligible to citizenship shall be admitted to the United States* unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d) and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3. [Italics ours.]

SEC. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws, not inapplicable, shall apply to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of

> the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act.
>
> SEC. 28. As used in this Act—
>
> * * * * *
>
> (c) The term "ineligible to citizenship," when used in reference to any individual, includes an individual who is debarred from becoming a citizen of the United States under section 2169 of the Revised Statutes, or under section 14 of the Act entitled "An Act to execute certain treaty stipulations relating to Chinese," approved May 6, 1882, or under section 1996, 1997, or 1998 of the Revised Statutes, as amended, or under section 2 of the Act entitled "An Act to authorize the President to increase temporarily the Military Establishment of the United States," approved May 18, 1917, as amended, or under law amendatory of, or supplementary to, or in substitution for, any of such sections.

Sections 1996, 1997, and 1998 of the Revised Statutes, above mentioned, deal with draft evaders and deserters. Section 2 of the Act of May 18, 1917, c. 15 (40 Stat. 76, 77), as amended by later acts, deals with alien declarants claiming exemption from the draft. With them this case is not concerned. But the first two statutes above enumerated are directly in point. These are:

> R. S. 2169. The provisions of this Title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent.

Act of May 6, 1882, c. 126, s. 14 (22 Stat. 58, 61):

> That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

## ARGUMENT

### I

That the wives in this case are "aliens ineligible to citizenship" can not for a moment be doubted. They are ineligible under the provisions of Section 2169 of the Revised Statutes, and also under section 14 of the Act of May 6, 1882, c. 126 (22 Stat. 58, 61). Nor is their ineligibility altered by marriage to American citizens, no matter when the marriage took place. If it took place prior to September, 1922, it is governed by section 1994 of the Revised Statutes, which excludes Chinese wives by providing that—

> Any woman who is now or may hereafter be married to a citizen of the United States, *and who might herself be lawfully naturalized,* shall be deemed a citizen. [Italics ours.]

If the marriage took place since September, 1922, it is governed by the Act of September 22, 1922, c. 411, s. 2 (42 Stat. 1021, 1022), which provides:

> That any woman who marries a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States

> by reason of such marriage or naturalization; but, *if eligible to citizenship,* she may be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions * * *. [Italics ours.]

So in either case these Chinese wives must be held to be "aliens ineligible to citizenship" as contemplated by the Immigration Act of 1924.

## II

Since they are aliens ineligible to citizenship, they are barred from the United States by section 13 (c) of that Act, which excludes all such aliens. Section 13 (c) enumerates a list of exceptions, *which does not include persons having the status of the present appellants.* Those exceptions, incorporated into section 13 (c), make the section read:

> No alien ineligible to citizenship shall be admitted to the United States unless such alien is—
>
> 1. An immigrant previously lawfully admitted, who is returning from a temporary visit abroad. (Section 4 (b).)
>
> 2. A minister of religion or a professor, or the wife, or child under 18, of such minister or professor. (Section 4 (d).)
>
> 3. A bona fide student at least 15 years old. (Section 4 (e).)
>
> 4. A government official, or a member of his household. (Section 3 (1).)
>
> 5. A tourist. (Section 3 (2).)

6. An alien in continuous transit through the United States. (Section 3 (3).)

7. An alien lawfully admitted, who later goes in transit from one part of the United States to another, through foreign contiguous territory. (Section 3 (4).)

8. An alien seaman. (Section 3 (5).)

9. An alien entitled to enter as a merchant under a present existing treaty of commerce and navigation. (Section 3 (6).)

There are, therefore, nine exceptions to the general rule which excludes aliens ineligible to citizenship. The appellants in this case do not fall within any of those exceptions. And so, by the express language of the statute, they must be excluded under the general rule laid down by section 13 (c).

## III

But it is argued that sections 4 (a) and 6 (a) (supra, pp. 4, 6) give to the wives of American citizens the right to enter, and that this right is not taken away by section 13 (c). It is further argued that a conflict exists in the Act, and that section 13 (c) must give way.

It is submitted that these arguments are untenable. There is, in fact, no conflict; and the whole statute may be construed without declaring any part inconsistent with any other.

Sections 4 (a) and 6 (a) do not confer upon the wife of a citizen any unqualified right to enter. Their purpose is merely to exempt or to relieve her from the numerical requirements of the quota. Section 4 (a) exempts her from the operation of

the quota by declaring her to be a "non-quota immigrant." Section 6 (a) gives her a preference within the quota. But in neither case is she given a right to enter regardless of all limitations whatsoever. She can not, for example, enter without a visa. She can not enter if she is of the criminal class. She can not enter if she is suffering from a contagious disease. In brief, she can not enter, merely because she is a wife, *unless she is otherwise admissible.* The limitation "if otherwise admissible" is inherent in both section 4 (a) and section 6 (a) and, indeed, in almost every section of the Act.

It was not the intention of Congress to confer the right of entry upon *inadmissible* aliens merely because they are related to citizens of the United States, or for any other reason. This is made clear by numerous provisions of the Act—for example, by section 2 (g), section 5, section 9 (f), section 13 (a) (4), and section 25—all of which are quoted above. The marriage status here confers no additional right either to enter or to remain in violation of the law. *Low Wah Suey* v. *Backus,* 225 U. S. 460, 476.

The provisions of sections 13 (c) constitute an additional restriction upon immigration and extend alike to quota immigrants and to nonquota immigrants. The application of section 13 (c) extends to the whole Act, with the nine exceptions set forth above. Among those nine exceptions no mention is made of the wives of American citizens;

no reference is made to sections 4 (a) and 6 (a). Section 13 (c) in terms excludes *all* aliens who are ineligible to citizenship. That section reads, "*No alien ineligible to citizenship shall be admitted.*" There is no ground upon which we can make the interpolation suggested by opposing counsel, "*No alien ineligible to citizenship* **[unless married to a citizen]** *shall be admitted.*" The statute must be construed as it is written; and the inevitable conclusion is that alien wives of citizens can not be admitted unless they are themselves eligible to citizenship.

## IV

Nor can it be argued that this was not the intention of Congress. An examination of the legislative history of the Immigration Act of 1924 shows that Congress had its attention clearly fixed upon this problem and that Congress deliberately intended that section 13 (c), should apply to cases like the one at bar.

When the bill (having been practically redrawn) was reported from the Conference Committee to the House, the attention of Members was specifically drawn to this point; and the following colloquy took place between Mr. Watkins and Mr. Vaile (the latter being a member of the conference committee, in charge of the bill on the floor):

> Mr. WATKINS. Every student can come in, and every preacher, student, and instruc-

> tor, not only that, but every Japanese a citizen of the United States can go over there and bring back a wife.
>
> Mr. VAILE. *No. Read the language* [Congressional Record (68th Congress, 1st Sess.), Vol. 65, part 8, p. ~~8230~~ 8229] [Italics ours.]

Both Japanese and Chinese are alike ineligible to naturalization under Section 2169 of the Revised Statutes; and the intention of Congress to exclude both from admission to this country is clear. Congressional Record, vol. 65, part 9, p. 8639. Nor is there any indication that Congress intended to make any exception in favor of Japanese or Chinese wives of American citizens. On the contrary, if the statement above quoted is to be taken as an indication, it seems clear that Congress deliberately intended *not* to make that exception.

## V

It is an elementary principle of statutory construction that *expressio unius est exclusio alterius*. In this instance Congress has enunciated as a general rule that aliens ineligible to citizenship are to be denied admission to the United States. To this general rule Congress has made nine exceptions, as set forth above, under point II. It is idle to argue that Congress might have added, or ought to have added, a tenth exception in favor of these appellants. There is no such tenth exception in the Act. Where a section of a statute contains its own

specific provisos and limitations, the existence of these tends to negative any other and implied exception. *Lapina* v. *Williams,* 232 U. S. 78, 92.

> No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute. [*United States* v. *Goldenberg,* 168 U. S. 95, 103.]
>
> Wherever the situation of a party was such as, in the opinion of the legislature, to furnish a motive for excepting him from the operation of the law, the legislature has made the exception. It would be going far for this court to add to those exceptions. [*McIver* v. *Ragan,* 2 Wheat. 25, 29.]
>
> [Cf. *Bank of Alabama* v. *Dalton,* 9 How. 522, 529.]

## VI

But the appellants argue that it would work a grave hardship upon them in this case to exclude them from the United States; that the domicile of the husband is the domicile of the wife; and that these wives have a right to enter and reside in the country of which their husbands are citizens.

It is submitted that these arguments are for Congress, and not for the courts. In this case the will of Congress has been manifested by clear and unambiguous words. *All* aliens ineligible to citizenship are to be excluded, with certain exceptions. Those exceptions do not cover this case. That Con-

gress might have expected these appellants is irrelevant. That it did not in fact except them is clear. And since that is so, the courts have only to follow the expressed will of Congress.

The argument based upon hardship can not prevail against the clear language of the Act. As this Court has said:

> This argument is a dangerous one, and never should be heeded where the hardship would be occasional and exceptional. It would be better, it was once said by Lord Eldon, to look hardship in the face rather than to break down the rules of law. [*St. Louis and Iron Mountain Ry.* v. *Taylor*, 210 U. S. 281, 295.]
>
> [Cf. *United States* v. *First National Bank*, 234 U. S. 245, 260.]

Nor does the argument of hardship receive any additional weight from the fact that the husbands in this case are citizens of the United States. Their wives are not citizens; and under the law they never can be naturalized no matter how long they may remain married to citizens.

It is fair to assume that Congress had these facts in mind; but, in any event, the law is clear. A recent decision of this Court is directly in point:

> The words of the statute being clear, if it unjustly discriminates against the native-born citizen, or is cruel and inhuman in its results, as forcefully contended, the remedy lies with Congress and not with the courts. Their duty is simply to enforce the law as it

is written, unless clearly unconstitutional. [*Chung Fook* v. *White,* 264 U. S. 443, 446.]

It may be conceded that the effect of the law is to divide families, and to deny to the wife the right to enter and reside in the country where her husband is domiciled. But even that fact can not furnish grounds for judicial legislation or afford reason for departure from the plain words of the statute. This Court has on at least three recent occasions been confronted with similar arguments; and in each case it has declined to interfere.

*Chung Fook* v. *White,* supra.
*Commissioner of Immigration* v. *Gottlieb,* 265 U. S. 310.
*Yee Won* v. *White,* 256 U. S. 399.

## VII

Moreover, even if these appellants had been otherwise entitled to enter the country, still they were properly excluded because of their failure to comply with the requirements of the law.

The Immigration Act of 1924 requires immigration visas from both quota immigrants (section 2) and non-quota immigrants (section 8). An immigrant who is the wife of a citizen of the United States may enter as a nonquota immigrant under section 4 (a) *provided* that her husband has made the application prescribed by section 9. Or she may obtain preference within the quota under section 6, *provided,* likewise, that her husband has made the application required by section 9. In

either case the wife can not enter without obtaining an immigration visa, and she can not obtain that visa until her husband has made application to the Commissioner General.

In this case no applications were made by the husbands and no visas were obtained by the wives. It is true that the wives were on the high seas on July 1, 1924, when certain portions of the Act, together with regulations thereunder, went into effect. But it must be noted that section 31 (a) of the Act provides:

> Sections 2, 8, 13, 14, 15, and 16, and subdivision (f) of section 11, shall take effect on July 1, 1924, *except that immigration visas and permits may be issued prior to that date, which shall not be valid for admission to the United States before July 1, 1924.* [Italics ours.]

The record does not show that any attempt was made prior to July 1, 1924, to obtain immigration visas, as contemplated by section 31 (a). And without visas the appellants can not be admitted under section 13 (a) of the Act.

## VIII

It is submitted, then, that these appellants were properly excluded. Even under the assumption that they are otherwise admissible, they have not complied with the formalities prescribed for admission; and this ground alone would suffice for exclusion.

It is submitted, however, that they are not in fact admissible under any circumstances, regardless of the question of the visas. The law which excludes these aliens is clear and unambiguous. The courts can not add to the exceptions created by Congress.

It is therefore submitted that both of the questions certified should be answered in the affirmative.

JAMES M. BECK,
*Solicitor General.*
WILLIAM J. DONOVAN,
*Assistant to the Attorney General.*

APRIL, 1925.

○

FILED
MAR 23 1925
WM. R. STANSBURY
CLERK

IN THE

# Supreme Court of the United States

**October Term, 1924. No. 770.**

CHANG CHAN *et al.*,

v.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

## Motion for Leave to file Brief as *Amicus Curiae*, and Proposed Brief of *Amicus Curiae*

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## ERRATA.

P. 11, lines 28–29: For "(Section 4 [a])" read "(Section 4 [b])".
P. 12, line 3: For "(Section 4 (a))" read "(Section 4 [b])".
P. 12, line 13: For "Section 4 (b)" read "Section 4 (d)".
P. 15, lines 20–24: Rewrite to read thus:

> The application is made to the Commissioner General. Under Section 9 (e), if he finds the facts stated in the petition to be true,
>
> > "he shall, with the approval of the Secretary of Labor, inform the Secretary of State of his decision, and the Secretary of State shall then authorize"
>
> the proper consular officer to issue an immigration visa to such immigrants as non-quota immigrants under subdivision (a) of Section 4. This is the only machinery provided for

## Outline of Argument.


PAGE

Motion ..... 1
Statement ..... 2
Argument:

I. The petitioning wives had the right, under the provisions of sub-division (a) of Section 4 of the Act of 1924, to enter the United States by virtue of the fact that their respective husbands were citizens of this country ..... 4
   1. Rights of Chinese wives and children of American citizens prior to the passage of the Act of 1924 ..... 4
   2. An analysis of the provisions of the Act does not show any intention to limit the plain meaning of sub-division (a) of Section 4, under which the Chinese wives and children of the petitioners would be admissible to this country ..... 8

II. The failure of the petitioners to procure immigration visas under Section 9, subdivisions (b), (c) and (d), is not a sufficient ground for denying the relief prayed for ..... 17

III. The questions certified should be answered in the negative ..... 18

## Table of Cases Cited.


| | PAGE |
|---|---|
| Ah Yup, In re, 5 Sawyer 155 | 11 |
| Chinese Exclusion Case, 130 U. S. 581 | 11 |
| Chiu Shee, Ex parte, 1 Fed. (2 d) 798 | 14 |
| Chung Toy Ho, In re, 42 Fed. 398 | 5, 6 |
| Commissioner of Immigration *v.* Gottlieb, 265 U. S. 310 | 7 |
| Holy Trinity Church *v.* United States, 143 U. S. 457 | 5, 14 |
| Lau Ow Bew *v.* United States, 144 U. S. 47 | 14 |
| Ozawa *v.* United States, 260 U. S. 178 | 10 |
| Tsoi Sim *v.* United States, 116 Fed. 920 | 5, 8, 12 |
| United States *v.* Mrs. Gue Lim, 176 U. S. 459. | 5, 6, 7, 13 |
| Yee Won *v.* White, 256 U. S. 399 | 7, 13 |

## Other Authorities.


| Acts of Congress: | PAGE |
|---|---|
| U. S. R. S., Sec. 2169 | 10, 11 |
| 23 Stat. 115 | 11 |
| 28 Stat. 7 | 5 |
| 39 Stat. 874 | 7 |
| 42 Stat. 5 | 8, 9 |
| 42 Stat. 540 | 8 |
| 43 Stat. 153: | |
| Section 2 | 10, 16 |
| " 3 | 10 |
| " 4 | 4, 8, 10, 11, 12, 14, 15, 16, 17 |
| " 5 | 10 |
| " 6 | 10 |
| " 7 | 10 |
| " 8 | 10 |
| " 9 | 2, 3, 8, 12, 15, 16 |
| " 11 | 10 |
| " 12 | 10 |
| " 13 | 3, 9, 10, 11, 12, 14, 15, 17, 18 |
| " 15 | 10 |
| " 16 | 10 |
| " 18 | 10 |
| " 25 | 10 |
| " 28 | 10 |
| Treaty: | |
| 22 Stat. 826 (China, 1880) | 6, 7, 13 |
| House Reports, 68th Cong., 1st Session: | |
| No. 176 | 16 |
| No. 350 | 16 |
| No. 716 | 16 |

IN THE

# Supreme Court of the United States

**October Term, 1924.**

| | |
|---|---|
| CHANG CHAN, WONG JUNG KAY, YEE SIN JUNG, JING HING WAH, CHAN SHEE, KON SHEE, WONG SHEE and NG YUET SEUNG, *against* JOHN D. NAGLE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO. | No. 770. |

## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*;

**also**

## BRIEF SHOWING THAT THE QUESTIONS CERTIFIED BY THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, SHOULD BE ANSWERED IN THE NEGATIVE.

Now comes HENRY W. TAFT, an Attorney and Counsellor of this Court and represents that there are involved in the above entitled case questions arising under the Immigration Act of 1924, approved May 26, 1924 (43 Stat. 153, c. 190), an answer to which may vitally affect the interests and status of a number of his clients who

would be seriously prejudiced by a decision affirming the position taken below by the Commissioner of Immigration and by the Government.

Therefore, he prays leave to file a brief and argument as *amicus curiae* to the end that the questions certified by the Circuit Court of Appeals be answered in the negative. He is permitted by counsel for the petitioner and by counsel for the United States herein to say that they have no objection to the granting of such leave.

The brief and argument proposed to be submitted is as follows:

## Statement.

The decision of the District Court for the Northern District of California, Southern Division thereof, Second Division, upheld the right of the petitioners to admission into this country under the Immigration Law of 1924 because they were Chinese wives of American citizens, but the Court refused to order admission because the petitioners had not procured, under Section 9 of the Act, an immigration visa. The first four appellants are the husbands (the petitioners) and the last four appellants are the petitioning wives (the detained). A petition was filed for a writ of *habeas corpus* for the release of the detained wives, and for a determination that the detained were entitled to the right of permanent admission into the United States on the ground that their husbands were respectively citizens of this country and permanently domiciled therein (Rec., p. 1). A hearing was not accorded to the petitioners by the Commissioner of Immigration, but a Board of Special Inquiry made an examination after which it denied them admission under the provisions of the Immigration Act of 1924, which became effective July 1, 1924, after the date of the respective marriages of the appellants (Rec., p. 2). An appeal from the decision of the Board to the Secretary

of Labor was dismissed. The decisions in all the cases were substantially the same, and to the following effect:

> "Neither the citizenship of the alleged husband, nor the relationship of the applicant to him, has been investigated for the reason that even if it were conceded that both elements exist she would still be inadmissible, as Section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship, and the Department has no alternative than to recommend exclusion." Decision of the Secretary of Labor, quoted by the District Court (2 Fed. [2d], 995, 996), and by the Circuit Court of Appeals (Rec., p. 2).

The petitions were based upon the claim that the effect of this interpretation of the Immigration Act of 1924 was in violation of the "treaty, statutory and constitutional rights of appellants, who are citizens of the United States, and their wives who were and are persons of the Chinese race." (Rec., p. 2). The petitions were amended by filing the original immigration records, and a general demurrer was interposed in each case which was sustained by the lower court on October 25, 1924; and the court thereupon refused to issue the writs of *habeas corpus* as prayed for and denied the petitions. (2 Fed. [2d] 995). The District Judge disapproved the ground of rejection of the Secretary of Labor, and held that Chinese women ineligible to naturalization who had, before the passage of the Act, become the wives of citizens of the United States, were entitled to admission under the terms of the Immigration Act of 1924, but he denied the petition upon the ground that the wives had not procured immigration visas under Section 9, subdivisions (b), (c) and (d). (Rec., p. 2.)

On July 1, 1924, when the Immigration Act became effective, the petitioning wives were upon the high seas destined for the United States.

One of the rules and regulations promulgated by the Commissioner General of Immigration under the Act of 1924, provided as follows:

> "Under the new law no Chinese alien wife or alien child of the Chinese race, of an American citizen is admissible solely because of such relationship to such person."

Under this provision it was impossible for the petitioning husbands of the Chinese wives, to procure an immigration visa, and it would have been ineffective if presented under the regulation above referred to.

When, upon appeal, the foregoing facts were presented to the Circuit Court of Appeals for the Ninth Circuit, that Court did not decide the case but certified the following question under Section 239 of the Judicial Code (Rec., p. 4):

"1. Should the petitioners be refused admission to the United States either,
   (a) Because of the want of a visa; or
   (b) Because of want of right of admission if found to be Chinese wives of American citizens."

## POINT I.

**The petitioning wives had the right, under the provisions of Subdivision (a) of Section 4 of the Act of 1924, to enter the United States by virtue of the fact that their respective husbands were citizens of this country.**

### 1. Rights of Chinese wives and children of American Citizens prior to the passage of the Act of 1924.

Chinese wives of American citizens before the passage of the Act of 1924, under the decisions of the courts,

had the right of entry into the United States. The leading case on the subject is *Tsoi Sim* v. *United States,* 116 Fed. 920 (C. C. A., 9th Circuit, 1902). The case came before the Court on appeal from a judgment of deportation entered after the plaintiff in error had been found to be a "Chinese manual laborer * * * now within the limits of the Northern District of California * * * without the certificate of residence required by the act of Congress" (28 Stat. 7, c. 14). The plaintiff in error was the wife of an American citizen and the Circuit Court of Appeals construed the statute as not applying to one in her situation on the broad ground that no specific intention on the part of Congress to separate a wife from her husband could be found in the statute and that the case was a proper one for the application of the general rule announced in *Holy Trinity Church* v. *United States,* 143 U. S. 457, 460 (1892) to the effect that statutes should be so construed as to avoid an unreasonable and absurd result. Judge Hawley went on to say (p. 925):

> "It being the law that the wife and children of a Chinese merchant are permitted to remain in this country because the domicile of the wife and children is that of the husband and father, as was expressly held in *Re Chung Toy Ho,* (42 Fed. 398) and approved by the Supreme Court in *U. S.* v. *Mrs. Gue Lim,* (176 U. S. 459) upon what method of legal reasoning can it be held that the wife of an American citizen is not entitled to the same 'rights, privileges, and immunities' under the law? The Chinese merchant does not stand upon a higher plane than the Chinaman who is born of parents, of Chinese descent, having a permanent domicile and residence in the United States. On the contrary, the native born, by virtue of his birth, becomes a citizen of the United States, and is entitled to greater rights and privileges than the alien merchant. The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and

> privileges of the marriage relations. *These are her, as well as his, natural rights. By virtue of her marriage, her husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country.*"

Prior to the passage of the Act of 1924, the question arose as to whether wives and children of Chinese merchants were entitled to the privilege of entry into this country conferred by the Treaty of 1880 (22 Stat. 826) upon the merchants themselves. This question was answered in the affirmative by most of the lower federal courts that considered it, and eventually by this Court; and the views expressed in the opinions indicate a liberality of interpretation of treaty rights of wives and children of admissible aliens, based upon considerations which are not without weight in considering the rights of wives under the Act of 1924 who claim admission by virtue of the citizenship of their husbands.

In *United States* v. *Mrs. Gue Lim,* 176 U. S. 459, (1900), this Court took the view that "it is not possible to presume that the treaty, in omitting to name the wives of those who by the second article were entitled to admission, meant that they should be excluded" (p. 466). The Court expressly approved the reasoning of Deady, D. J., in the case of *In re Chung Toy Ho,* 42 Fed. 398 (C. C. Ore., 1890). In that case, Judge Deady, calling attention to the provision of the treaty by which a Chinese merchant might bring his "body and household servants with him into the United States", proceeded (pp. 399, 400):

> "It is impossible to believe that parties to this treaty, which permits the servants of a merchant to enter the country with him, ever contemplated the exclusion of his wife and children. And the reason why they are not expressly mentioned, as entitled to such admission, is found in the fact that the domicile of the wife and children is that of the husband and father, and that the

> concession to the merchant of the right to enter the United States, and dwell therein at pleasure, fairly construed, does include his wife and minor children; particularly when it is remembered that such concession is accompanied with a declaration to the effect that, in such entry and sojourn in the country, he shall be entitled to all the rights and privileges of a subject of Great Britain or a citizen of France.
>
> * * * * * * *
>
> "My conclusion is that under the treaty and statute, taken together, a Chinese merchant who is entitled to come into and dwell in the United States is thereby entitled to bring with him, and have with him, his wife and children. *The company of the one, and the care and custody of the other, are his by natural right; and he ought not to be deprived of either, unless the intention of Congress to do so is clear and unmistakable.*" (Italics ours.)

In *Yee Won* v. *White*, 256 U. S. 399, 400 (1921), this Court approved the decision in the *Gue Lim* case as having established the proposition that the wife of a Chinese merchant could not be excluded under the treaty "since this would obstruct the plain purpose of the treaty of 1880 to permit merchants freely to come and go" (p. 401).

These decisions indicate the liberality with which the courts have viewed the rights of alien wives and children of husbands who in any capacity are themselves entitled to live in this country. Nothing in *Commissioner of Immigration* v. *Gottlieb*, 265 U. S. 310 (1924), affects the principle on which these cases were decided, as that case did not involve treaty rights. An express provision in the 1917 Act (39 Stat. 874, c. 29) exempted from the excluding provisions "ministers * * * their legal wives or their children" only when such ministers were immigrating from the barred Asiatic zone. But Gottlieb came not from the Asiatic zone but from Palestine.

Furthermore, he could not successfully invoke the 1921 Acts (42 Stat. 5, c. 8; 42 Stat. 540, c. 187), since the pertinent exemption of these acts applied to "ministers of any religious denomination" without mentioning their wives and children; and neither the other provisions of the Act of 1917, nor its legislative history, justified a construction of the statute more broad than its plain language required.

If the provisions of the Act of 1924 are construed in the spirit of liberality which led to the decision in the *Tsoi Sim* case, there is no difficulty in arriving at the conclusion that the wives and children of the petitioners are admissible under the provisions of subdivision (a) of Section 4 of the Act; and this interpretation is in consonance with expressions of Congressional intent contained in reports of the House Committee on Immigration and Naturalization referred to below.

**2. An analysis of the provisions of the Act does not show any intention to limit the plain meaning of subdivision (a) Section 4, under which the Chinese wives and children of the petitioners would be admissible to this country.**

Section 4 provides as follows:

> "Non-Quota Immigrants.
>
> "Sec. 4. When used in this Act the term 'non-quota immigrant' means:
>
> "(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9;"

Under familiar principles of law it will be presumed that Congress was aware of the judicial interpretation to which we have called attention above, by which in effect the Chinese wives and children of American citizens were themselves held to be vested with the same

right to dwell in this country as that enjoyed by the husbands and fathers. But the Government claims that the right previously existing was expressly taken away by subdivision (c) of Section 13, which provides as follows:

> "(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."

An answer to this claim of the Government involves a consideration of the general purpose of the Act of 1924.

In a brief to be submitted in *Cheung Sum Shee et al.* v. *John D. Nagle,* No. 769, we deal with the general policy underlying the provisions of the Immigration Act of 1924 with reference to the exclusion of aliens. We take the liberty of referring the Court to the analysis of the statute contained in that brief, at pp. 6 *et seq.*

The exclusion of aliens is provided for in the Act of 1924 upon two principles which are not interdependent. The policy dictating the one is different from that upon which the other is based. The quota plan of limiting immigration was in force under the Immigration Law of 1921, and was more fully developed under the Act of 1924. It establishes a limitation of the number of admissible aliens by fixing quotas with reference to percentages of persons already lawfully within this country, and who are of the same nationality or of the same national origin as those seeking admission. The class excluded on the other principle, that is, because they were "ineligible to citizenship" are principally members of Oriental races who have been deprived of the right of becoming American citizens be-

cause they are not "free white persons" or "aliens of African nativity" or "persons of African decent." (Section 2169 R. S., and other laws enumerated in Section 28 (c) of the Act of 1924, as construed in *Ozawa* v. *United States,* 260 U. S. 178 [1922]).

Sections 2, 4, 5, 6, 7, 8, 9, 11, 12, 16 and 18, all relate to the quota system. The only sections which could in any view relate to exclusion on account of ineligibility to citizenship are Sections 3, 5, 13, 15, 25 and 28, and of these the only ones of much importance in relation to that subject are Sections 3 and 13. General provisions relating to burden of proof, rules and regulations and penalty provisions are not relevant in the present discussion. The attempted merger in one Act of provisions relating to the two systems of exclusion has led to some confusion in phraseology.

Bearing in mind the general nature of the two principles referred to, we propose to examine the rights of the petitioners under subdivision (a) of Section 4 of the Act.

Section 4 is the first of the sections specifically relating to quota immigrants. Its purpose is to exclude from the quota count certain specified immigrants. But the exclusion is not in any of the cases provided for based upon ineligibility to citizenship. Section 13, on the other hand, is entitled "Exclusion from United States," and obviously is intended to cover exclusion in all cases whether under the quota system or as a result of ineligibility to citizenship.

Subdivisions (b), (d) and (e) of Section 13 relate to temporary and special cases, which need not be especially dealt with, excepting that subdivision (d) of Section 13 will be referred to in connection with Point II.

The argument for the exclusion of the wives and children in this case is based by the Government upon the

provisions of subdivision (c) of Section 13 which provides as follows:

> "(c) No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."

The first noticeable feature of this provision is that among the exceptions to exclusion on account of ineligibility to citizenship, it omits to include the case of the "unmarried child under 18 years of age, or the wife of a citizen" who were provided for in subdivision (a) of Section 4. The question thus arises: Why was it necessary to make an exception in the case of non-quota immigrants referred to in subdivisions (b), (d) and (e) of Section 4, and not in the case of the wife and child of a citizen provided for in subdivision (a) of that Section? This requires a consideration of the scope and purpose of Sections 4 and 13.

Section 4 provides for non-quota immigrants, without reference to their "eligibility to citizenship." Under former immigration laws and under the provisions of existing treaties, there had occurred instances of aliens "lawfully admitted to the United States" (Section 4 [a]) who were ineligible to citizenship under the provisions of Section 2169 R. S., confining the privilege of citizenship to "free white persons", "aliens of African nativity", or "persons of African descent".* It was not

* It is well known that prior to the passage of the Chinese Exclusion Act (23 Stat. 115 c. 220), there were thousands of aliens in this country who were incapable of being naturalized. This appears from the observations of this Court in the *Chinese Exclusion case*, 130 U. S. 581, 594-596 (1889), read in the light of decisions under U. S. R. S., Sec. 2169, such as *In re Ah Yup*, 5 Sawyer 155 (C. C. Cal., 1878).

the purpose of the Act of 1924 to compel a deportation of such aliens or prevent them from "returning from a temporary visit abroad" (Section 4 (a)). It therefore became necessary to exempt them from that provision of subdivision (c) of Section 13, which declared that "no alien ineligible to citizenship shall be admitted to the United States." Ministers, professors, etc., and their wives and unmarried children under 18 years of age, and students entering the United States for the purpose of study, etc., were not to be counted in the quota, and as a matter of long established policy were to be admitted although ineligible to citizenship and exceptions were necessary in their cases (Section 4 (b) and (e) and Section 13 (c)). But a similar exception was not necessary in the case of the wife and child of a citizen of the United States because under the law as it had then been interpreted (particularly in *Tsoi Sim* v. *United States, ante,* p. 5), the alien wife and child of a citizen of the United States even though "ineligible to citizenship" had a derivative right of entry into this country because the citizen himself had such right. Furthermore, if we regard Section 4 (a), Section 9 and Section 13 (a) (3) as provisions under the quota system especially designed to cover the case of a wife of a United States citizen, we shall find a sensible reason for omitting, because it would be unnecessary, an exception in her case in subdivision (c), Section 13.

It would be a violent assumption in the absence of "clear and unmistakable" language and a consistent purpose, shown by apt provisions, to say that the well established right, recognized in Section 4 (a) by specific exemption from quota limitation, should be taken away from a citizen and his family by the omission to exempt it in Section 13. It would be more reasonable to say that Congress meant to allow American citizens and their families to retain the status which the courts had held that they had before.

Further reasons may be adduced in answer to the claim of the Government.

(a) There can be no sound reason based upon policy for excluding the alien family of an American citizen while admitting (1) the wife and child of a Chinese merchant not eligible to citizenship (as we show in our brief in No. 769 that the Act does), or (2) the family of an immigrant provided for in subdivision (d) of Section 4, equally ineligible, perhaps, because a member of an Oriental race. There is certainly as much reason for regarding the family of a citizen of the United States as a part of the *citizen* class, as there is for classifying the family of a Chinese *merchant* as one of the merchant class or the wife of a professor as of the *academic* class. Before the passage of the Act of 1924, in construing the existing treaties providing for the admission of the families of Chinese merchants, the courts were influenced by the humane consideration that the company of a wife and the care and custody of a child, are the possession of the husband and father "by natural right; and he ought not to be deprived of either, unless the intention of Congress to do so is clear and unmistakable." *United States* v. *Mrs. Gue Lim, ante,* pp. 6-7. To exclude the families, this Court said in *Yee Won* v. *White,* 256 U. S. 399, 401, (1921), "would obstruct the plain purpose of the Treaty of 1880 [22 Stat. 826] to permit merchants freely to come and go." When the question came up as it did in the *Tsoi Sim* case, *supra,* the same considerations led the courts to admit the wife of an American citizen, although she was of the Chinese race. The court contrasted the status of a Chinese merchant and an American citizen if the family of the one is to be admitted and of the other to be excluded, adding (116 Fed., at p. 925):

> "The wife has the right to live with her husband; enjoy his society; receive his support and maintenance and all the comforts and privileges of

> the marriage relations. These are her, as well as his, natural rights. By virtue of her marriage the husband's domicile became her domicile, and thereafter she was entitled to live with her husband, and remain in this country."

These considerations are just as weighty now as they were before the passage of the Act of 1924, and the result of discriminating against the wife and child of an American citizen in the manner indicated above would be just as absurd now as it was before, and the courts have repeatedly refused to construe statutes of this character so as to have that result. *Lau Ow Bew* v. *U. S.*, 144 U. S. 47 (1892); *Holy Trinity Church* v. *U. S.*, 143 U. S. 457 (1892).

(b) If we attribute to Congress the intention to cover in subdivision (c) of Section 13 cases where admission is not sought because of the citizenship of a husband and father because that case is sufficiently taken care of in subdivision (a) of Section 13, we shall avoid a conflict with the plain words of subdivision (a) of Section 4, by which the family of a citizen of the United States may be admitted as a non-quota immigrant. In *Ex Parte Chiu Shee*, 1 Fed. (2d), 798 (D. Mass., 1924), Judge Lowell took the view that the provisions of the Act could be reconciled in that way. He said:

> "The omission of subdivision (a) of section 4 from the provisions of section 13 arose, not from a settled purpose of Congress to exclude such a wife, but from the fact that in considering section 13 Congress had only aliens in mind, and did not realize that the section as passed diminished the rights of American citizens, already carefully safeguarded by section 4 (a). * * * The discrepancy between section 4 (a) and section 13 (c) is thus reconciled by construing the latter provision as applying only to aliens who are not related to American citizens."

Judge Lowell's decision is cited with approval by the District Judge in the case at bar. 2 Fed. (2d) 995, 999.

(c) The quota provisions of the Act show that there was no intention to exclude the wife and child of an American citizen on account of their ineligibility to citizenship.

Subdivision (a) of Section 4 contemplates the "filing of a petition under Section 9." The latter section is entitled "Issuance of Immigration Visas to Relatives," and is the only provision of the Act for the issuance of an immigration visa on account of relationship. It requires the filing of a petition, not by the relative seeking admission but by the citizen claiming that an immigrant is his relative. It requires the petitioner to state the facts on which *his* citizenship is based, certain particulars in relation to his business, the degree of relationship to the immigrant, and that the petitioner will support the immigrant. *There is no statement required as to the nationality of the wife or child whose admission is sought.*

The application is made to the Commissioner General. If he finds "the *facts stated in the petition* to be true he may issue an immigration visa to each of the immigrants" as a non-quota immigrant under subdivision (a) of Section 4. This is the only machinery provided for in the Act for the admission of "the unmarried child under 18 years of age or the wife of a citizen of the United States who resides therein at the time of the filing of a petition under Section 9." There is no method by which the Commissioner can ascertain whether or not the immigrant "is ineligible to citizenship" under the provisions of subdivision (c) of Section 13. He may find on the allegations of the petition that the relative of the American citizen is "a non-quota immigrant" and thereupon authorize the issuance of an immigration visa to the immigrant as a relative of the petitioner without inquiring as to whether the immigrant is eligible to citizenship. It

is true that under subdivision (e), Section 9, he must authorize the consular officer to issue the immigration visa and that that document must (Section 2 [a]) specify the nationality of the immigrant. But if ineligibility to citizenship had been intended to bar the applicant, the Commissioner would have been authorized to deal with that subject and machinery would have been provided by which he would have found ineligibility and would thus have avoided the useless process of sending the matter back to the consular officer. If we assume that eligibility to citizenship has nothing to do with the admission of wives and children of citizens, no such incongruity exists.

(d) The foregoing interpretation of the Act receives strong confirmation from its legislative history. When the bill was first introduced (H. R. 6540), and committed to the Committee of the Whole on February 9, 1924, the Committee stated that it "exempts wives, children under 18, and parents over 55, of American citizens." (House Report No. 176, 68th Congress, First Session, p. 2). In reporting the bill in its later form the Chairman of the Committee on Immigration on March 24, 1924, repeated the above statement. (House Report No. 350, 68th Congress, First Session, p. 1). In the bill as ultimately passed (H. R. 7995), the exemption was extended to "the unmarried child under 18 years of age, or the wife, of a citizen of the United States" (Sec. 4 [a]). In their statement, after the bill had been agreed upon in conference with the Senate Committee, the Managers on the part of the House declared that the bill had been changed "by limiting the 'relative' clause to wives and children of American citizens." (House Report No. 716, 68th Congress, First Session, p. 19).

There is nothing in the legislative history to indicate an intention that the exemption should apply only to wives and children who are eligible to citizenship.

## POINT II.

**The failure of the petitioners to procure immigration visas under Section 9, subdivisions (b), (c) and (d), is not a sufficient ground for denying the relief prayed for.**

The petitioning wives were non-quota immigrants (Section 4 (a)). Without an immigration visa which in the visa specified that fact, they were excluded under Section 13 (a) (3), *unless* they could bring themselves within the exception provided for in Section 13 (d), which provided as follows, viz.:

> "(d) The Secretary of Labor may admit to the United States any otherwise admissible immigrant not admissible under clause (2) or (3) of subdivision (a) of this section, if satisfied that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel from the last port outside the United States and outside foreign contiguous territory * * *".

The petitioning wives were, before the passage of the Act of 1924, under the decisions referred to above, "otherwise admissible" within the meaning of subdivision (d). They had been married prior to the effective date of the Act, and at that date were on the high seas (Rec., p. 2). Presumably they came from a Chinese port. The Act of 1924 was approved May 26, 1924. The petitioners may have sailed from China before that date, or if they sailed afterward it may well be that they could not with "reasonable diligence" have "ascertained" whether under the recently passed and somewhat elaborate Act they had been deprived of the right of admission. The Secretary of Labor took a view of the case

which made an investigation of these facts immaterial and the petitioners have not had the opportunity to present them for a ruling under Section 13 (d). That opportunity should have been accorded to them by sending the case back to the Secretary of Labor for further hearing instead of denying the petition, so that if the facts justifying such action appeared he could have admitted the petitioners under Section 13 subdivision (d).

## POINT III.

**The questions certified should be answered in the negative in accordance with the foregoing views.**

March 20, 1925.

Respectfully submitted,

HENRY W. TAFT,
*Amicus Curiae.*

## OUTLINE OF ARGUMENT


PAGE

Motion ..... 1
Statement of the Case ..... 2
Argument:

I. Neither the law nor the regulations promulgated pursuant thereto require that such aliens as the petitioning wives herein shall present immigration visas as a condition precedent to admission ..... 3

1. Provisions relating to aliens ineligible to citizenship constitute a system of exclusion intended to be separate and distinct from that constituted by the provisions prescribing quotas and specifying the method of keeping accurate current account of the state of such quotas ..... 4

2. By the highest executive authority, exercised immediately after the enactment of the statute, the law was so construed and applied as to make it unnecessary, indeed impracticable, for petitioners herein to obtain immigration visas ..... 6

II. The Act, if construed reasonably, in accordance with its plain intent, in such manner as to effectuate its real objects, and so as to avoid absurd, oppressive, discriminatory, and inhumane results, can not be regarded as changing the long-established policy and practice of permitting alien Chinese wives and mothers of American citizen husbands and children to enter and reside in the United States with such citizen husbands and children ..... 9

1. Statutes should be so construed as to effectuate their known objects, but not so as to produce unintended, absurd, oppressive, discriminatory, or inhumane results.

The spirit and purposes should be ascertained and followed..... 10

2. The real object of the Law..... 10

3. Congress intended the Law to be a humane measure..... 14

4. The construction for which the Government contends would result, not in effectuating, but in hindering, the attainment of the main object of the law.... 16

5. The construction contended for by the Government would produce unintended, absurd, oppressive, discrimnatory, and inhumane results..... 18

6. There are ample judicial precedents for construing immigration laws in the manner urged..... 22

7. Certain decisions which do not constitute precedents for, but are distinguishable from, the case at bar..... 30

8. Sections 5 and 25 do not affect petitioners' status..... 33

III. The certified questions should be answered in the negative..... 35

## TABLE OF CASES CITED


PAGE

Aird, Ex parte, 276 Fed., 954 ..... 28
Anderson vs. Watts, 138 U. S., 694, 706 ..... 19
Chang Chan, et al., vs. Nagle (case at bar), 2 Fed. (2d), 995, 998, 999 ..... 2, 16, 18
Chiu Shee, Ex parte, 1 Fed. (2d), 798, 799-800 ..... 16, 18 31
Chung Fook vs. White, 264 U. S., 443 ..... 30
Chung Toy Ho, In re, 42 Fed., 398 ..... 25
Church of the Holy Trinity vs. United States, 143 U. S., 457, 460-461 ..... 10, 27, 28
Commissioner of Immigration vs. Gottlieb, 265 U. S., 310 ..... 31, 32
Goon Dip, et al., Ex parte, 1 Fed. (2d), 811, 813 .. 16
Gouthro, Ex parte, 296 Fed., 506 ..... 29
Lau Ow Bew vs. United States, 144 U. S., 47, 59 .. 10, 24
Lee Kan vs. United States, 62 Fed., 914 ..... 25
Low Wah Suey vs. Backus, 225 U. S., 460 ..... 30
Scharrenberg vs. Dollar Steamship Company, 229 Fed., 970; also 245 U. S., 122 ..... 28
Tatsukichi Kuwabara vs. United States, 260 Fed., 104 ..... 28
Tom Hong vs. United States, 192 U. S., 517 .... 25
Tsoi Sim vs. United States, 116 Fed., 920, 923, 925, 926-927 ..... 19, 22, 23
United States vs. Gay, 95 Fed., 226 ..... 28
United States vs. Gue Lim, 176 U. S., 459, 464, 467 ..... 10, 25
United States vs. Kirby, 7 Wall., 482, 486 ..... 10, 22
United States vs. Union Bank of Canada and United States vs. Royal Dutch West India Mail Company, 262 Fed., 91 ..... 28, 29
United States vs. Wong Kim Ark, 169 U. S., 649 . 17, 18
Zartarian vs. Billings, 204 U. S., 170 ..... 20, 31

## OTHER AUTHORITIES


PAGE

Acts of Congress:
- Chinese Exclusion Act of 1882-1884 (23 Stat. L. 115), Sec. 6 ..... 24
- Chinese Exclusion Act of 1893 (28 Stat. L., 7), Sec. 2 ..... 24
- Contract Labor Law of 1885 (23 Stat. L., 332) 27
- Expatriation Act of 1907 (34 Stat. L., 1228), Sec. 5 ..... 20
- Immigration Act of 1924 (43 Stat. L., 153, c. 190):
  - Sec. 2 ..... 5
  - Sec. 4 ..... 3, 14, 19, 20, 34
  - Sec. 5 ..... 5, 33, 35
  - Sec. 6 ..... 5
  - Sec. 7 ..... 5
  - Sec. 8 ..... 5
  - Sec. 9 ..... 2, 5
  - Sec. 11 ..... 5
  - Sec. 12 ..... 6, 7
  - Sec. 13 ..... 2, 3, 5, 10, 16, 26, 35
  - Sec. 14 ..... 15
  - Sec. 18 ..... 5
  - Sec. 25 ..... 32, 34, 35
  - Sec. 28 ..... 32
- Revised Statutes:
  - Sec. 1993 ..... 17, 18, 20, 26
  - Sec. 2172 ..... 20

Circulars:
- Bureau of Imm'n Circular of July 1, 1924, entitled "Chinese Rules and Regulations under the Immigration Act of 1924" ..... 8
- Bureau of Imm'n Circular of August 7, 1924, entitled "Chinese General Order No. 4" .... 8
- Constitution of the United States, Art. 14, Sec. 1 ..... 21

Congressional Bills:

H. R. 6540, 68th Cong., 1st sess..... 11, 14
H. R. 7995, 68th Cong., 1st sess..... 11, 14
S. 2576, 68th Cong., 1st sess..... 11, 14

Congressional Record, Vol. 65:

Part 6; pp. 5411, 5466-5467, 5649, 5661, 5741-5743, 5806; also Senate debates of April 7, 8, 9, and 14.....12, 13, 15
Part 7; pp. 6377-6378, 6460, 6642..... 12, 15

Congressional Reports:

H. R. Report No. 176, 68th Cong., 1st sess., p. 2 14
H. R. Report No. 350, 68th Cong., 1st sess., p. 6 11, 14
H. R. Report No. 716, 68th Cong., 1st sess..... 14

Proclamation of the President No. 1703, dated June 30, 1924..... 7, 9
Treaty with China of 1880 (22 Stat. L., 826), Art II..... 25

IN THE

# Supreme Court of the United States

October Term, 1924

CHANG CHAN *et al.*,

vs.

JOHN D. NAGLE, as Commissioner of Immigration for the Port of San Francisco. } No. 770.

## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE;

## Also

## BRIEF SHOWING THAT QUESTIONS CERTIFIED BY THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD BE ANSWERED IN THE NEGATIVE.

Now comes A. WARNER PARKER, an attorney and counselor of this Court, and represents that there are involved in the above entitled case questions arising under the Immigration Act of 1924 (43 Stat. L., 153, c. 190), certified to this Court under Sec. 239 of the Judicial Code, answers to which may vitally affect the status and interests of a number of his clients, as such clients would be injured by a decision affirming either the decision of the administrative officials of the Government or the decision of the District Court, Northern District of California, in the above entitled case.

Therefore, he prays leave to file a brief and argument as *Amicus Curiae,* to the end that the questions certified by the Circuit Court of Appeals for the Ninth Circuit may be answered in the negative. He is permitted by counsel for the petitioners and for the Government herein, respectively, to say that they have no objection to the granting of such leave.

The brief and argument proposed to be submitted follows:

## STATEMENT OF THE CASE

The several petitioners (appellants) herein are Chinese wives of American citizens of Chinese descent. Their husbands reside in the United States. Petitioners were refused admission by the immigration officials at San Francisco because those officials conceived that they were "inadmissible, as section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or [are] persons ineligible to citizenship." (Rec., p. 2.) Their finding was affirmed by the Secretary of Labor.

The District Court, Northern District of California, on fully reviewing the law applicable to the case and the reasons underlying such law, expressed disapproval of the finding of the immigration officials and Secretary of Labor, and held that petitioners would have been entitled to admission had their husbands complied with the provisions of subdivisions (b), (c), and (d) of section 9 of the act and in that manner obtained for petitioners from an American consul the immigration visa specified by the law [sections 13 (a) and 9]; and upon that ground only declined to grant a writ of habeas corpus [2 Fed. (2d), 995, 999].

Thereupon, the case was appealed to the Circuit Court of Appeals, Ninth Circuit, which Court then certified to this Court the following questions:

> "1. Should the petitioners be refused admission to the United States either,
>
> (a) Because of the want of a visa; or
>
> (b) Because of want of right of admission if found to be Chinese wives of American citizens?" (Rec., p. 4.)

The theory upon which the Court below proceeded evidently is that the Immigration Act of 1924 requires, as a condition precedent to admission, that each and every alien shall present an immigration visa, irrespective of whether the case of such alien falls within the quota-visa excluding clause [section 13 (a)], or merely within the ineligible-to-citizenship excluding clause [section 13 (c)]. Hence the first question.

The theory upon which the immigration officials excluded petitioners seems to be that, inasmuch as the ineligible-to-citizenship excluding clause [section 13 (c)], when making cross-references to certain exceptions to the quota-visa excluding system set up in section 4 of the act, does not include in such cross-references subdivision (a) of that section referring specifically to the wives of American citizens, the law can not be construed as continuing in force the practice which has heretofore obtained, under the Chinese exclusion laws, of admitting the Chinese wives of American citizens. Hence the second question.

## POINT I

**Neither the law nor the regulations promulgated pursuant thereto require that such aliens as the peti-**

**tioning wives herein shall present immigration visas as a condition precedent to admission.**

Consideration of the 1924 Act casually and without attempting to analyze its various provisions or to apply them to practical situations might lead to the conclusion that the law is arranged in a remarkably logical manner and is unusually artistic and terse in composition. But if careful analysis and practical application are attempted, it immediately becomes apparent that clearness of expression and certainty of terms have been sacrificed to sequence, brevity, and artistic effects. Therefore, it is necessary in cases such as this to look thoroughly into the objects intended to be accomplished and the systems of regulation intended to be applied to their accomplishment. When the law is so examined, it becomes clearly apparent that—

**Provisions relating to aliens ineligible to citizenship constitute a system of exclusion intended to be separate and distinct from that constituted by the provisions prescribing quotas and specifying the method of keeping accurate current account of the state of such quotas.**

Failure to make proper distinctions in concrete cases, such as the one at bar, between aliens falling within these two main and separate sets of provisions must necessarily lead to erroneous decisions—as it has in the present instance.

The two systems of exclusion set up by the act may be described as the quota-visa system and the ineligible-to-citizenship system, respectively. For the purposes of the former, the expressions "immigrant," "non-immigrant," "quota-immigrant," and "non-quota immigrant" are fre-

quently used, and are carefully defined. In providing for exclusion under the other system, however, the word "immigrant" is not used [section 13 (c)], but the same word as has been used in previous immigration laws when describing excluded persons is employed, to wit, the word "alien."

It is apparent on the face of the statute that the provisions with regard to immigration visas are indissolubly interlocked with those establishing quotas and specifying the methods of their determination and their effects. Immigration visas are to be procured by immigrants, and issued by consuls, respectively, because Congress concluded that the best way of keeping accurate and current account of the reductions occurring from day to day in the various quotas, and of insuring that aliens claiming to be non-quota immigrants are really of that status, would be to require, as a condition precedent to admission, that every immigrant within the reach of the quota-visa provisions of the law should, when coming to a port of the United States, be in possession of a visa (quota or non-quota) issued by the appropriate consul abroad. This conclusion must be drawn from such provisions of the statute as the opening clauses of section 2, section 5, the first two clauses of section 6, subdivision (a) and clause 2 of subdivision (b) of section 7, section 8, the opening clauses of subdivisions (a), (b) and (e) of section 9, subdivision (f) of section 9, subdivisions (a) and (f) of section 11, subdivisions (a) and (e) of section 13, and section 18. A sufficient illustration is subdivision (f) of section 11, reading as follows:

> "(f) There shall be issued to quota immigrants of any nationality (1) no more immigration visas in any fiscal year than the quota for such nationality,

> and (2) in any calendar month of any fiscal year no more immigration visas than 10 per centum of the quota for such nationality, except that if such quota is less than 300 the number to be issued in any calendar month shall be prescribed by the Commissioner General, with the approval of the Secretary of Labor, but the total number to be issued during the fiscal year shall not be in excess of the quota for such nationality."

This clearly shows that quotas and visas are interdependent features of the law—*no quotas, no field of operation for visas; no visas, no accurate current account of quotas.*

While the act contains no statement, in so many words, that the quota-visa system is not to be applied to countries the nationals of which belong to races ineligible to citizenship, the inference that such is the intent of the law is inescapable.

**By the highest executive authority, exercised immediately after the enactment of the statute, the law was so construed and applied as to make it unnecessary, indeed impracticable, for petitioners herein to obtain immigration visas.**

Strange as it may seem with the fact existing that several cases have already gone before the courts because the administrative officials have insisted upon applying the quota-visa provisions to ineligible-to-citizenship aliens, the highest executive officials of the Government have, from the very outset, construed the law as carrying the inescapable inference to which allusion has been made.

By subdivision (b) of section 12 it is made the duty of the Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, to prepare the figures

on which the annual quotas under the law shall be based; and by subdivision (e) of section 12 it is made the duty of those three officials, jointly, to report annually to the President the quota allotted to each nationality. By the same subdivision it is made the duty of the President to "proclaim and make known the quotas so reported." Immediately upon the passage of the 1924 Act the said three Secretaries established quotas in the manner so prescribed, and on June 30, 1924, the President issued a proclamation putting such quotas into effect.

By that proclamation the three Secretaries concerned and the President have placed upon the act the construction necessitated by the inescapable inference mentioned. Quotas based upon the census of 1890 are established for countries the nationals of which are eligible to citizenship. But for the countries of Asia and the adjacent islands, the nationals of which are ineligible to citizenship, nominal quotas of 100 each are established. Explaining this, the President states:

> "For each of the countries indicated by an asterisk (*) is established a nominal quota according to the minimum fixed by law. These nominal quotas, as in the case of all quotas, hereby established, are available only for persons born within the respective countries who are eligible to citizenship in the United States and admissible under the immigration laws of the United States." (Proclamation No. 1703, dated June 30, 1924, entitled "[Immigration Quotas]".)

Taking China to illustrate the matter, this appears: The President's proclamation assigns to China a nominal quota of 100, with the explanation that such quota is established solely for the purpose of caring for the (nec-

essarily rare) cases of eligible-to-citizenship aliens born in China. (*If China were entitled to a regular quota it would have to be about 2000,* for the Chinese population of the United States in 1890 was approximately 100,000.) If a white or a black quota alien migrates from China to the United States, such person must be counted against the nominal quota of 100; and, of course, such an alien must secure a quota visa before migrating—otherwise no accurate current account could be kept of the condition of the nominal quota. But when a Chinese person migrates from China to the United States, there is no quota against which such person can be charged, hence it would be, not only superfluous, but foolish because utterly useless, to require such person to procure an immigration visa.

Yet, in the face of this obviously correct executive construction, when the Commissioner General of Immigration, with the approval of the Secretary of Labor, issued regulations with regard to the application of the new law to Chinese (Bureau of Immigration Circular, of July 1, 1924, entitled "Chinese Rules and Regulations under the Immigration Act of 1924"; Bureau of Immigration Circular of August 7, 1924, entitled "Chinese General Order No. 4"), the attempt was made so to put the law into operation as to apply the visa requirements to practically all aliens ineligible to citizenship coming from China. Consequently a number of Chinese have been excluded because they did not possess the immigration visa specified by the quota-visa provisions.

It is apparent that the attention of the court below was not called to the circumstances just set forth; otherwise that court would scarcely have gone so far as to invoke against the petitioners provisions which had not been

availed of in this particular case by the administrative officials and which the highest executive officials had made it impossible for petitioners lawfully or regularly to observe.

Tersely stated, the matter stands thus: Three Cabinet officials and the President are charged by the law with the duty of making up and promulgating the quotas for the various countries, against which quota visas are to be issued by the appropriate consular officers. In the discharge of that duty, the President, upon the advice of his Cabinet officials, reaches the conclusion that the law does not contemplate that a quota shall be assigned to any country (such as China) the nationals of which are excluded independently of the quota-visa system and simply because they are ineligible to citizenship—are excluded by a separate and more far-reaching system. The President then issues a proclamation applying the law in that manner. In the face of this situation, to exclude from the United States for lack of visa aliens coming from that country, for whom no quota is provided by the law as proclaimed by the President, and with respect to whom there was, therefore, no occasion or authority for consuls to issue visas, would seem to be too patently unfair and illegal to require further comment.

## POINT II

The act, if construed reasonably, in accordance with its plain intent, in such manner as to effectuate its real objects, and so as to avoid absurd, oppressive, discriminatory, and inhumane results, can not be regarded as changing the long-established policy and practice of permitting alien Chinese wives and moth-

**ers of American citizen husbands and children to enter and reside in the United States with such citizen husbands and children.**

**1. Statutes should be so construed as to effectuate their known objects, but not so as to produce unintended, absurd, oppressive, discriminatory, or inhumane results. The spirit and purposes should be ascertained and followed.**

This Court, in the case *United States vs. Kirby, 7* Wall., 482, 486, laid down the fundamental principle that——

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

Numerous similar decisions might be cited, but it will suffice to refer to:

> *Church of the Holy Trinity vs. United States,* 143 U. S., 457, 460-461.
> *Lau Ow Bew vs. United States,* 144 U. S., 47, 59.
> *United States vs. Mrs. Gue Lim,* 176 U. S., 459, 467.

**2. The real object of the law.**

Consideration of the history of section 13 (c) of the Immigration Act of 1924 discloses that the purpose Con-

gress had in view in enacting such section was to prevent the creation and continuance in this country of communities or "colonies" composed of aliens who could never become, under our Constitution and laws, citizens of the Republic. The provision originated with the House Committee on Immigration. It appeared first as sub-division (b), section 12, of the original House Bill (H. R. 6540, 68th Congress, 1st Session); and then was incorporated, again as subdivision (b) of section 12, in the second bill reported by the House Commitee (H. R. 7995), which was eventually passed by the House. It did not appear in the Senate bill (S. 2576), as introduced by Senator Reed of Pennsylvania, or as reported by the Senate Immigration Committee, section 10 of which measure related to exclusion. When reporting the bill the House Committee, after alluding to decisions of this Court regarding the ineligibility for naturalization of certain Orientals, stated with respect to this particular provision:

> "All must agree that nothing can be gained by permitting to be built up in the United States colonies of those who can not, under the law, become naturalized citizens, and must therefore, owe allegiance to another government." (H. R. Report No. 350, 68th Congress, 1st Sess., p. 6.)

Persistent efforts were made while the Senate bill (eventually merged with the House bill) was pending before the Senate to have an amendment adopted incorporating therein the ineligible-to-citizenship provision. Senator Shortridge of California introduced the amendment. To him, the proponent and chief advocate thereof in the Senate, it is natural to look for an explanation of its purposes. The debates show clearly that, for some time after its introduction, but very little sentiment in

its favor could be developed. (See Congressional Record, Vol. 65, pt. 6, Senate debates of April 7, 8, 9, and 14.) But eventually a marked change of feeling took place, as the result of the making public of the famous "serious consequences" letter written by the Japanese Ambassador to the Secretary of State. Then Senator Reed of Pennsylvania, managing the bill, reported an amendment of the same character as that previously suggested by Senator Shortridge and corresponding in every substantial respect with the similar House provision excluding aliens ineligible to citizenship, which amendment was adopted by a vote of 71 to 4. (Congressional Record, Vol. 65, pt. 7, pp. 6377-6378, 6460.)

This amendment so placed in the Senate bill had, of course, been thoroughly debated as the result of Senator Shortridge's effort to have it adopted; hence the understanding of its purpose by the various Senators who eventually voted for it must have been gained, largely at least, from the detailed statement made to the Senate by the original proponent of the amendment. Therefore, Senator Shortridge's explanation is peculiarly pertinent and significant. On April 7, 1924, in the course of a lengthy statement, he asserted that he regarded the law which denied naturalization to Orientals as wise, and therefore thought it "unwise to admit into our country *to reside permanently, in mass,* races of people who may never become citizens of the Republic;" that the purpose was "to check the increase of a foreign, alien people, who can not become citizens of the United States, and whose presence provokes domestic trouble and may cause national estrangement." (Congressional Record, Vol. 65, pt. 6, pp. 5741-5743. Italics volunteered.) And continuing his explanation on the following day, he in-

dicated that the provision was directed against the building up in this country of "a large mass of people who may never become citizens"—that its intent was to prevent "these foreign peoples who may never become citizens" from building "up, as it were, an *imperium in imperio*—a state within a state, a country within a country." (Congressional Record, Vol. 65, pt. 6, p. 5806.)

Obviously Senator Shortridge had exactly the same understanding of the underlying object of the ineligible-to-citizenship excluding provision as was entertained by the Committee on Immigration of the House; and the Senate, like the House, when voting upon the provision, was fully and authoritatively informed that its purpose was to prevent the building up in this country of communities or "colonies" of aliens who may never become citizens by naturalization; that the object was to prevent this "mass" immigration and to prevent, so far as possible, the segregation into groups in this country of persons who still owed, and who must continue to owe, allegiance to foreign countries, and who, because of our well-established naturalization policy, could never be assimilated into our body politic.

Neither the Committee reports nor the record of the debates with regard to either the House or the Senate bill, so far as it has been possible to discover, contain any statement affirmatively indicating an intent to prevent American citizens from having their wives with them in the United States. Indeed, it would seem that the fact (alluded to more particularly hereinafter) that the proposed law was making adequate provision to prevent the separation of families of American citizen husbands, so far as alien wives and alien children generally were concerned, but, if taken in an absolutely literal manner,

was failing to apply the provision having that object [subdivision (a), section 4] to cases in which the American citizens' wives might be of the yellow race, was entirely overlooked in both the House and the Senate. So it may be stated with assurance that probably not one of those voting for the proposed measure realized at all the existence of this inconsistency in the literal terms of the measure.

However, it *is* clearly shown by the House Report upon the bill and by the debates that——

**3. Congress intended the law to be a humane measure.**

On the front page of its report (H. R. Rep. No. 350, 68th Cong., 1st Sess.) the House Committee on Immigration, *in enumerating for the information of the House membership the things accomplished by the bill*, not only stated "The bill * * * carries numerous sections to lessen the hardships of immigrants," but asserted *specifically and unqualifiedly* that "The bill * * *exempts *wives*, children under 18, and parents over 55, of *American citizens*." A similar statement had been made when the first bill (H. R. 6540) was reported (H. R. Rep. No. 176, 68th Cong., 1st Sess., p. 2). And after its second bill (H. R. 7995) had been passed by the House and the Senate bill (S. 2576) had been passed by the Senate, and the two referred to a Committee of Conference, the managers on the part of the House reported to that body that the bill had been changed "by limiting the 'relative' clause to wives and children of American citizens." (H. R. Rep. No. 716.) In none of the reports was there any statement of intention not to exempt wives belonging to

Oriental races as well as all other alien wives of American citizens. And certainly, with these authoritative statements before them to the effect that the bill exempted all the wives of all American citizens, every member must have believed that the bill did not, and must have intended that the law should not, make any distinction in its exemptions between wives of citizens who happened to be of a yellow race and wives who happened to be of a white or black race, or any distinction in the privileges it recognized between American citizens of those respective races.

Chairman Johnson of the House Committee, in explaining the purpose of the bill, pointed out on the floor of the House that one of the main purposes of the bill was *to prevent the separation of members of families.* (Congressional Record, Vol. 65, pt. 6, p. 5661.) He also asserted that there had been "provided many paragraphs to reduce the hardships of those that come as immigrants." (Ibid., p. 5649.) And Senator Reed of Pennsylvania, who was the author and manager on the floor of the Senate bill, also emphasized the humane objects of the measure. (Congressional Record, Vol. 65, pt. 6, pp. 5466-5467.) Senator Colt, then Chairman of the Senate Committee on Immigration, in explaining the purposes of the bill, also called attention to the general objects of humanity which Congress had in view. (Congressional Record, Vol. 65, pt. 6, p. 5411.) And while the bill was under debate in the Senate, on April 18, 1924, Senator Spencer introduced an amendment, which was adopted, and which now forms the proviso to section 14 of the law, which further demonstrates the view of Congress that humanity should prevail to as full an extent as possible in the operation of the immigration laws. (Ibid., pt. 7, p. 6642.)

In connection with the foregoing, it is worthy of note that each of the three District Courts which have so far considered the question here at issue, including the court which decided this case below, have reached the conclusion that if the law is reasonably viewed, its main object taken into consideration, and its declared general humane purposes given their proper weight, the conclusion must be reached that Congress did not intend by section 13 (c) to put an end to the long-existing policy and practice of admitting the Chinese wives of American citizens. [*Ex parte Goon Dip, et al.*, 1 Fed. (2d), 811, 813; *Ex parte Chiu Shee*, 1 Fed. (2d), 798, 799-800; *Ex parte Chang Chan, et al.*, 2 Fed. (2d), 995, 998-999.]

**4. The construction for which the Government contends would result, not in effectuating, but in hindering, the attainment of the main object of the law.**

It is well known that one of the chief reasons why foreigners congregate in colonies within this country is because they cannot, will not, or do not become citizens—do not become in a real sense a part of our body politic, having the same rights, privileges, and civic ambitions and desires as our own citizens. With such people as the Chinese and Japanese, who cannot under our laws become naturalized here, the impossibility of acquiring citizenship increases and accentuates the danger constituted of these "colonies." The converse, generally, of this situation is, of course, that where aliens can and do become citizens the danger arising from their congregation in foreign "colonies" is measurably reduced.

While Chinese can not be naturalized in our courts, many Chinese are citizens, either through birth in this

country (*United States vs. Wong Kim Ark,* 169 U. S., 649), or through birth abroad to fathers who are American citizens (section 1993, Revised Statutes), and such citizens are entitled to exactly the same rights, privileges, and immunities as are citizens of other racial extraction. The new immigration law does not change this situation.

As a practical proposition, this may be stated with certainty: If, by giving this statute literal effect, Chinese who are American citizens are prevented from bringing their Chinese wives into the United States, many of them will, notwithstanding the great inconvenience and expense involved, rear families in China. The children born to them there will, of course, be American citizens; and, while the literal application of the law will operate in practice to keep those children out of the country of their own and their fathers' citizenship and will separate them almost constantly from their fathers until they are well matured, they will always be eligible to enter this country, and in most instances will enter, on nearing or reaching maturity.

Which is the sounder policy and the one comporting most closely with the underlying purpose of the statute under discussion: To create a situation under which Chinese born into a status of American citizenship shall necessarily be reared in foreign communities and under foreign influences and then be admitted to the United States after their habits, ideas, and ideals of life have been formed; or to follow a course which will result either in those children actually being born on American soil or in their being permitted to join their fathers, along with their mothers, while still of tender years? Would not the first course necessarily result in forcing into the very alien "colonies" the building up of which the law is in-

tended to prevent of these Chinese born into citizenship and making them, although technically citizens, to all intents and purposes foreigners within our midst? And would not the liberal, reasonable, and humane construction of the statute here contended for tend to make real Americans out of these citizens, whether born abroad or here, and correspondingly to discourage the segregation of such citizens into "colonies" to all intents and purposes foreign? All history and experience answer in the affirmative.

The two District Courts which have considered this phase of the matter have agreed in the view that the admission of the Chinese wives of American citizens could not interfere with the attainment of the main object of the law. [*Ex parte Chiu Shee*, 1 Fed. (2d), 798-799; *Ex parte Chang Chan, et al.*, 2 Fed (2d), 995, 998.]

**5. The construction contended for by the Government would produce unintended, absurd, oppressive, discriminatory, and inhumane results.**

The husbands of these petitioners, having been born in the United States, where their parents were residing at the time of their birth and where such husbands now reside, not only are themselves citizens (*United States vs. Wong Kim Ark, supra*), but any children who may be borne to them by the respective petitioners, no matter where the birth may occur, will also be citizens of the United States (section 1993, Revised Statutes). Therefore, some of the absurd, oppressive, discriminatory, and inhumane results, none of which it is thought could have been intended by Congress, of construing this law as excluding the Chinese wives of American citizens would be the following:

(a) The setting aside of the principle of law that the domicile of the husband is that of the wife (*Tsoi Sim vs. United States,* 116 Fed., 920, 923, citing *Anderson vs. Watts,* 138 U. S., 694, 706), and the denial to an American citizen of the right of having his wife with him, together with the requirement that the wife shall forever remain in a foreign country. The only way of avoiding such ***permanent separation*** would be for the husbands of petitioners to submit to what in effect would be their own banishment.

(b) When children are born to petitioners, although they will be born into American citizenship and at birth acquire the right of immediately entering the United States, such children will not be able to exercise that right and their fathers will not be able to enjoy the natural right of having their children with them otherwise than upon the penalty of separating the children from the mothers, as the mothers must permanently remain outside this country.

(c) Under an exception to the quota-visa provisions [section 4 (d)], made by reference also an exception to the ineligible-to-citizenship provisions, Congress has humanely provided that aliens, of whatever race, who are ministers or priests, or professors or teachers, may bring into the United States their *alien* wives or their *alien* children. The separation of these *alien* wives and *alien* children from their *alien* husbands and fathers, or of the *alien* children from their *alien* mothers, is guarded against. It would certainly seem an absurdity to impute to Congress an intention to be more humane with respect to *aliens,* whether men, women, or children, than with respect to *citizens.* Can it be supposed that Congress ever intended that the law should have the effect of sep-

arating wives from their *citizen* husbands and of making it impossible for *citizen* children to join their *citizen* fathers without leaving their mothers in foreign countries?

(d) Section 4 of the act contains a provision reading as follows:

> "Sec. 4. When used in this Act the term 'non-quota immigrant' means——
>
> "(a) An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9; * * *."

Of course, as this law relates to aliens and can not in any manner affect United States citizens, the above quoted provision refers to wives who are aliens and children who are aliens. As section 1993 of the Revised Statutes confers citizenship upon all children born abroad to American fathers, the only alien children of citizens are those born to fathers who at the time of their birth were aliens but who subsequently became naturalized, such children not having begun "to reside permanently in the United States." (Sec. 5, Act of March 2, 1907—34 Stat. L., 1228; Sec. 2172, Revised Statutes; *Zartarian vs. Billings,* 204 U. S., 170.) Therefore, the above quoted exception absolutely exempts from the quota-visa excluding provision *alien* women of white or black races, married to United States citizens resident in this country, and also absolutely exempts therefrom *alien* children of citizens who have acquired citizenship, not by *birth* within the United States, but by *naturalization* occurring subsequent to the birth of such children. Congress has, most humanely, made the literal terms of the statute a complete

safeguard against the separation of these *alien* women from their *citizen* husbands and of these *alien* children from their fathers who are *naturalized* citizens.

Could anything be more unreasonable or absurd than to believe that Congress intended to be more humane with regard to citizens who are of *white or black races* than with regard to those who are of a *yellow race,* or to be more regardful of the rights and family love of men who are citizens *by naturalization* only than of those of men who are *native born citizens?*

(e) So desirous have we been to insure that discriminations shall not be made on grounds of race or color between citizens of the United States that we have incorporated in our Constitution a provision to the effect that none of the States shall abridge the privileges or immunities of United States citizens, or deny them the equal protection of the laws (Article 14, section 1). Can we suppose that Congress intended by the enactment of this law to have the Federal Government, in the exercise of its control over immigration, say to our white and black citizens, "You are as a United States citizen entitled to the privilege of having your wife here with you whatever her nationality may be and all children she may have borne to you, whatever their ages, she may bring with her;" and at the same time say to our citizens who happen to be of a yellow race, "If you marry a foreign woman of your own race and color you can not enjoy the privilege of having her live with you, unless you will banish yourself from the country of your birth and take up your residence in the foreign place where she is, and no matter how many children she may have borne you, nor what their ages may be, they cannot live here with you otherwise than upon separating from the mother?

**6. There are ample judicial precedents for construing immigration laws in the manner urged.**

It is not believed that, during the entire period of over thirty years during which our present system of Chinese exclusion has been in force, the administrative branch of the Government has ever denied the right of an American citizen of the Chinese race to have his wife with him in the United States under such exclusion laws. See Treasury decision No. 22551, dated October 19, 1900, Treasury decisions January-December, 1900, Vol. 3, quoted in the decision of the Circuit Court of Appeals, Ninth Circuit, of May, 1902, in *Tsoi Sim vs. United States,* 116 Fed., 920, 925. But in 1902 an Immigration Inspector brought about the arrest of a Chinese woman, who had been residing in the United States during the registration period, but who had failed to register under the Chinese Exclusion Act of 1893, and who, after the expiration of the registration period, had married an American citizen. It is believed that this is the only case of the kind of record. The Circuit Court of Appeals gave very careful consideration to the matter and ordered the woman released on habeas corpus. It is clear from the court's decision that it fully realized that there was in the Chinese exclusion law no exception, among the numerous exceptions enumerated therein, which could be regarded as affirmatively exempting the Chinese wife of an American citizen. But the court held that it would be unreasonable, unjust, and oppressive to give the statute literal application. It supported its conclusions in that regard with the quotation already given from *United States vs. Kirby,* and with references to some of the other cases to which attention is herein directed. (*Tsoi Sim vs. United States,* 116 Fed., 920, 926-927.)

It is also clear from this decision that, had it not been for the fact that the woman had married an American citizen, the court would have ordered her deportation; so that the decision, in effect, adds a class to the list of exempts specifically set up in the statutes. That case and the case at bar correspond in every substantial respect. The laws under which Tsoi Sim's deportation was attempted were composed of general provisions requiring exclusion or deportation of Chinese persons and of special exceptions in favor of what came to be known as the "exempt classes." The court could find nowhere in those laws an exception which made the Chinese wife of a citizen an exempt. But the court looked into the reasons of the laws and considered the oppression, hardship, and inhumanity which would result from a literal interpretation. In the present case the law, in general terms, excludes persons ineligible to citizenship, and sets up special exceptions not directly or by specific reference including wives of citizens. The oppression, hardship, inhumanity of literal construction is just as apparent, and the main reason for the passage of the statute could not be furthered, but rather would be hindered, by literal construction. In the Tsoi Sim case the court referred to the natural and inherent right of a man to have his wife with him in the place of his domicile, and to the general principle that the domicile of the husband is that of the wife, and held that in the absence of an affirmative law depriving a citizen of that natural right and evidencing an intent to set aside that general principle, the Chinese exclusion laws should be construed as not interfering with the admission of the Chinese wife of an American citizen. In the case at bar, as in that case, the question is not whether there is a law creating the right and conferring it upon the citi-

zen, *but whether there is any law taking an existing inherent and natural right away from the citizen.*

Another case which arose under the Chinese exclusion laws and well illustrates the point here made is *Lau Ow Bew vs. United States,* 144 U. S., 47, 59. Section 6 of the Exclusion Act of 1882 as amended by the Act of 1884 (23 Stat. L., 115) in terms required that "every Chinese person, other than a laborer * * *, who shall be about to come to the United States," should obtain a particular kind of certificate, which certificate should be "the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States." This Court, after pointing out that it is a well established principle that statutes should receive a sensible construction, examined the reasons for the law, and held that Chinese of the exempt classes domiciled in the United States and going abroad temporarily should be exempted from the operation of the statute although the law contained no exception in their favor. It held that the law ought to be given a sensible construction and that absurdity should be avoided, and if so considered, the conclusion must be reached that an exception was intended. The situation in the case at bar is not materially dissimilar.

By section 2 of the Chinese Exclusion Act of November 3, 1893 (28 Stat. L., 7), it was specified in terms that a merchant, for the purposes of the exclusion laws, must be "a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name." But the courts promptly held, when the question came before them, that, the purposes of the law considered, it was not necessary for the merchant to conduct the business in his own name, but merely that his

name should appear in the partnership articles and that he must have a real interest in the business; that it would be unreasonable, in the light of the history and purpose of the legislation, notwithstanding the apparently plain words of the statute, to impute to Congress an intention to change the well-known Chinese custom of doing business under firm designations, especially as the purposes of the law could not be furthered by so doing. (*Lee Kan vs. United States,* 62 Fed., 914; *Tom Hong vs. United States,* 193 U. S., 517.)

And the case of *United States vs. Mrs. Gue Lim,* 176 U. S., 459, 464, and the cases therein cited with approval (particularly *In re Chung Toy Ho,* 42 Fed., 398) constitute a precedent in two ways for construing immigration laws reasonably and in accordance with their purposes. The Treaty of 1880 (*22* Stat. L., 826), Article II, provided for the admission to the United States of teachers, students, merchants, and travelers, and their body and household servants, without specifying that the wives and children of such exempts might also be admitted; while the acts passed in execution of that treaty specified that all persons claiming to be members of such exempt classes must present, as the only permissible evidence of status, a certificate issued by the Chinese Government. But this Court and the lower courts held that it would be unreasonable to suppose that the parties to the treaty intended that merchants might come in and bring their servants with them and not also bring their wives and dependent children; and that, the reasons and purposes of the statute not so requiring, although the letter of the statute did, it would be unreasonable to hold that the wives and minor children of merchants had to procure from the Chinese Government the specified certi-

ficate of their exempt status—that evidence of their relationship to the merchant must, in reason, be regarded as sufficient to justify their admission.

The situation with respect to the case at bar is quite similar to that which existed in the Gue Lim case. By the new act Congress has left section 1993 of the Revised Statutes in full force, so that all children born in China to American citizen fathers must be admitted. While Congress has not placed in the law any provision which could be regarded as affirmatively excluding, by section 13 (c), the Chinese wives of American citizens, it has failed to place in the law an exception affirmatively granting them the right of admission. Is it not quite as unreasonable in this connection, as it was in the other, to suppose that it was intended that exclusion should occur? Can it reasonably be contended, especially with respect to an act the avowed purposes of which are of a humanitarian character, that Congress intended to create a situation in which it would be necessary to admit the children of American citizens, no matter how young and helpless they may be, and at the same time permanently to exclude their mothers? The treaty and acts together, if given literal effect, would have required that every Chinese person, without regard to age or relationship to other exempts, must be provided with a certificate as a condition precedent to admission; but the courts held that the law should not be construed literally because to do sc would produce unreasonable results. In the case at bar, such a construction as that contended for by the Government would produce, not only unreasonable, but oppressive and inhumane results, and, in doing so, would in no sense further, but rather would impede, the main object of the legislation.

But the precedents upon this subject are not confined to cases arising under the Chinese exclusion laws, nor to cases in which a liberal construction was placed upon the satutes because to do otherwise would cause hardship or suffering.

The original contract labor law of 1885 (23 Stat. L., 332) prohibited the importation of any alien "to perform labor or service of any kind in the United States;" but contained exceptions in favor of "professional actors, artists, lecturers, singers, and domestic servants." From time to time, as this law was reenected into the various immigration statutes, additions were made to this list of specifically enumerated exceptions.

In 1892 the original act came before this Court in connection with the case *Church of the Holy Trinity vs. United States,* 143 U. S., 457. This Court held that there was no doubt the act of the church in importing a pastor from England was within the letter of the law, which referred not only to labor but also to service. This Court also conceded that the incorporation into the statute of a list of exceptions tended to strengthen the idea that every other exception was to be excluded. Nevertheless, it held that it would be unreasonable to suppose, considering the history of the legislation, the objects it was intended to accomplish, and the fact that the American people are a religious people, that Congress intended that the law should be given any such literal construction as had been placed upon it by the administrative officers who excluded the pastor and by the lower court which had affirmed that exclusion. Thus, in effect, the decision read into the statute an exception in favor of ministers of the gospel.

Notwithstanding the fact that each time it reenacted the contract labor provisions Congress continued its original method of excluding by general broad provisions and inserting a list of exceptions, in which from time to time it incorporated additional classes, the courts have continued, ever since this Court handed down its decision in the Holy Trinity Church case, so to construe the alien contract labor provisions as to add to the specifically enumerated exceptions other classes which it had not occurred to Congress to include therein. See the following:

*United States vs. Gay* (95 Fed., 226, C. C. A., 7th Cir.), holding that a window dresser imported under contract is not a contract laborer.

*Scharrenberg vs. Dollar Steamship Company* (229 Fed., 970, C. C. A., 9th Cir.), holding that a seaman imported under contract for employment in foreign trade is not a contract laborer; affirmed by the Supreme Court (245 U. S., 122), ***which emphatically reaffirmed its holding of thirty years previously in the Holy Trinity Church case*** (page 126).

*Tatsukichi Kuwabara vs. United States* (260 Fed., 104, C. C. A., 9th Cir.), holding that a Japanese imported under a contract covering the teaching of the Japanese language, history, geography, and arithmetic is not a contract laborer.

*United States vs. Union Bank of Canada,* and *United States vs. Royal Dutch West India Mail Company* (262 Fed., 91, C. C. A., 2d Cir.), in effect reading into the law additional exceptions in favor of a bank bookkeeper and a steamship office clerk.

*Ex parte Aird* (276 Fed., 954, D. C., E. Dist. Pa.), holding that a draftsman possessing and applying in his work learning and skill as a marine engineer was admissible under the contract labor provisions either as a member of a recognized profession or as a person whose work was essentially

mental, not manual, although not enumerated among the exempt classes.

*Ex parte Gouthro* (296 Fed., 506, D. C., E. Dist. Mich.), to the effect that a telegraph operator imported from Canada is not a contract laborer, although not included in the list of exempts placed in the law by Congress.

In none of these cases expanding the exceptions to the alien contract labor provisions did there obtain reasons nearly as strong, especially from the point of view of avoiding inhumanity and oppression, as the reasons which obtain in the present case. In most of the cases the party really aggrieved was some employing corporation; the alien directly involved not having any particular claim upon the attention of the court. Take, for example, the Union Bank and Royal Dutch Mail cases: These clerks, absolutely within the literal terms of the statute, were brought here by New York branch houses of foreign corporations from their foreign offices, simply to suit the convenience of their own business. There would have been nothing inhumane or oppressive in requiring them to go back to their employment in the foreign houses. And the same thing was true of the telegraph operator involved in the Gouthro case—no inhumanity toward her would have been involved in requiring her to return to the position in Canada from which the telegraph company was transferring her.

But in the present case the American citizen husbands, their wives, and their children who may hereafter be born into American citizenship will suffer grievous hardship and oppression if the law is given literal application, and, at the same time, the real purpose of the statute will in no sense or degree be furthered.

**7. Certain decisions which do not constitute precedents for, but are distinguishable from, the case at bar.**

The decisions of this Court in *Low Wah Suey vs. Backus,* 225 U. S., 460, and *Chung Fook vs. White,* 264 U. S., 443, are clearly distinguishable from the case at bar.

It is one thing to say to all American citizens, whatever their race or color, "You can not bring into the United States a foreign woman as your wife if that woman is afflicted with some disease which will be a menace to any community in which she may settle or if she is of such an immoral character that she will be likely to destroy the morals of those with whom she may come in contact here." It is quite another thing to say to American citizens of a particular race or color, and not to American citizens generally, "You can not bring an alien woman into this country as your wife, no matter how sound that woman may be, morally, mentally, and physically, unless she belongs to a race members of which are permitted by our naturalization laws to become citizens."

It is one thing to construe strictly statutes the clearly expressed and historically known purpose of which is to protect the health and morals of the inhabitants of the country, even though such strict construction works hardship to individuals—aliens or citizens. It is quite a different thing to place such a construction upon a statute, even if it can be so construed under its literal and technical terms, when the history of the legislation shows that its underlying purpose was such that it could not be furthered; but rather would be impeded, by such construction, and when it is apparent that the observance of the

letter of the law and the disregard of its spirit will result in the harshest kind of discrimination, on race or color lines, between citizens of the United States, in the visiting of most severe hardships upon men, women, and little children, and in oppression and inhumanity—in the production of results which it is inconceivable that the legislature intended to produce.

Every nation must guard the morals and health of the communities within its boundaries; and the fact that, in order efficiently to do so, laws must be passed which in individual cases cause hardship is a circumstance which must give way to the general good. All citizens, whatever their race or color, must be willing, for the general good, to submit to the operation of such safeguarding laws. But where the object of the law is simply to prevent the building up in this country of "colonies" consisting of people who can never become citizens, and where that object would be hindered, rather than furthered, by keeping out of the country women who are the wives and the mothers of American citizens and who, if admitted, while not able actually to be naturalized themselves, would to all intents and purposes be but members of American citizen families, there is no reason for giving to the law such literal application as was properly given to it in the two decisions mentioned, but, on the contrary, every reason for giving to it a liberal construction. See in this connection *Ex parte Chiu Shee*, 1 Fed (2d), 798, 800.

The decision of this Court in *Zartarian vs. Billings*, 204 U. S., 170, is distinguishable from the case at bar for reasons similar to the foregoing.

And the recent decision of this Court in *Commissioner of Immigration vs. Gottlieb*, 265 U. S., 310, is also to be

distinguished from the case now under discussion. That decision arose under a law the terms of which were specific and clear, and the decision of the lower court had been based upon a misapprehension of one of the provisions of a previous law which it was construing *pari materia* with the later statute. The law there in point, moreover, was the act in which for the first time in the history of immigration legislation a quota system was provided, and the exceptions and preferences to be regarded in the operation of the quota system thereby devised were enumerated in such manner that there could be no question that Congress intended them to be exclusive of all other exceptions or preferences. That act, therefore, created and dealt with a new situation, and could not be considered as reaching back to a previously existing situation with the object either of modifying it or continuing it in force. But the law here involved, while creating a new system of exclusion, the ineligible-to-citizenship system, brings under that system a race of aliens members of which have heretofore been excluded by the Chinese exclusion laws, and in doing so provides specifically that the exclusion laws shall be kept in full force and effect [sections 25 and 28 (g)]; the exceptions enumerated in such law being given by cross-references only, and in such manner as, when the purpose and history of the legislation are taken into consideration, affords ample reason for believing that such exceptions were not intended to be exclusive of all others. Furthermore, there was involved in that case no question of the rights of citizens—no question of action which, in effect, would discriminate against one class of citizens as contrasted with two other classes. Again, in that case the hardship involved was of a temporary nature only, as refusal to permit the wives

and minor children of aliens admitted as non-quota to be admitted along with the husbands and fathers necessitated only that the wives and children should provide themselves with quota visas before embarking for this country, and, if the quota of their native land was exhausted, should wait for such brief time as was necessary to have a quota for another year come into existence; whereas in the case at bar, as already pointed out, refusal to permit the wives of American citizens to enter, while admitting the citizens and their citizen children, would have the effect of keeping the wives out of this country forever—of permanently separating them from their husbands, and possibly also from their small children, unless their husbands should be willing to submit to what in effect would amount to their own banishment.

**8. Sections 5 and 25 do not affect petitioners' status.**

So much of section 5 as needs any discussion reads as follows:

> "An alien who is not particularly specified in this Act as a non-quota immigrant or a non-immigrant shall not be admitted as a non-quota immigrant or a non-immigrant by reason of relationship to any individual who is so specified or by reason of being excepted from the operation of any other law regulating or forbidding immigration."

Clearly this provision does not apply to petitioners. They could not be excluded either as quota or non-quota immigrants. If excluded at all, they would have to be excluded as persons ineligible to citizenship. None of

them is an alien "who is not particularly specified in this act as a non-quota immigrant or a non-immigrant;" for, should they be regarded, for the purposes of argument, as being reached at all by the quota-visa provisions, they would be persons particularly specified as exempt from the quota provisions by subdivision (a) of section 4. They do not seek to be exempted by reason of relationship to any individual specified in the act as a non-immigrant or non-quota immigrant; but they seek exemption by reason of being the wives of United States citizens, persons to whom such description could not by any stretch of the imagination apply. Nor do they seek admission as "being excepted from the operation of any other law regulating or forbidding immigration;" for there is no law which actually contains any exception in favor of wives of American citizens, every immigration law ever passed being silent on that subject, and admission having heretofore occurred because of that very silence and because it was deemed unreasonable, in the absence of affirmative provisions of law so requiring, to suppose that Congress intended to exclude them and to deprive citizen husbands of the natural right of having their wives with them.

So much of section 25 as needs to be mentioned reads as follows:

> "An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this Act, and an alien, although admissible under the provisions of the immigration laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act."

As the women involved in the present case concededly are not excluded by any provision of previous immigration laws, of course the first clause of the above quoted provision can be laid aside without further comment. The second clause would be applicable to petitioners, but only to the extent of more emphatically expressing the purpose to exclude, if it could be shown that the purpose of section 13 (c) was to exclude the Chinese wives of American citizens simply because they are ineligible to citizenshp. But it has already been shown that so to construe said section would be unreasonable.

The fact that, in origin and historically, the above quoted provisions of sections 5 and 25 had an object wholly distinct from any purpose of either broadening or emphasizing the effects of section 13 (c) has been stated and discussed in detail in the brief submitted by the writer in case No. 769, *Cheung Sum Shee, et al., vs. Nagle,* now pending; and the liberty is taken of referring to that brief, pp. 17-21.

## POINT III

**The certified questions should be answered in the negative.**

Respectfully submitted,
A. WARNER PARKER,
*Amicus Curiae.*

## CHANG CHAN, WONG HUNG KAY, YEE SIN JUNG ET AL. *v.* NAGLE, COMMISSIONER OF IMMIGRATION.

ON CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 770. Argued April 17, 20, 1925.—Decided May 25, 1925.

1. Chinese women, being themselves ineligible to citizenship, do not become citizens of the United States by marrying American citizens. Rev. Stats. § 2169; Act of Sept. 22, 1922, c. 411, 42 Stat. 1022. P. 351.
2. Chinese women who, before the date of the Immigration Act of 1924, married American citizens of the Chinese race permanently domiciled in this country, were debarred by the Act from coming here to join their husbands, (no treaty right being involved,) since § 13 (c) forbids admission of aliens ineligible to citizenship, with certain exceptions which do not include such wives. P. 352.

3. Such Chinese wives, coming here to join their husbands, are immigrants as defined by § 3 of the Act. P. 352.
4. That consular officers must issue them visas does not signify that such wives must be admitted—in view of § 2 (g) of the Act, expressly declaring that an immigration visa shall not entitle an immigrant to enter if upon arrival he is found inadmissible under the immigration laws. *Id.*
5. The provision of § 4 of the Immigration Act, 1924, classifying wives and minor children of citizens of the United States residing here, etc., as non-quota immigrants, cannot be incorporated among the exceptions of § 13 (c) upon the theory that it was omitted by oversight. *Id.*
6. The hardships of a case, and suppositions of what is rational and consistent in immigration policy, cannot justify a court in departing from the plain terms of an immigration act. P. 353.

QUESTION certified by the Circuit Court of Appeals, arising upon appeal of a decision of the District Court, (see *Ex parte Chan Shee*, 2 Fed. (2d) 998), refusing relief by *habeas corpus* to the appellants, who were the husbands of four Chinese women detained by the immigration authorities, and the wives themselves.

*Mr. Frederick D. McKenney* and *Mr. George A. McGowan*, with whom *Messrs. Jackson H. Ralston, John L. McNab, Roger O'Donnell, George W. Hott, W. J. Peters, M. Walton Hendry, J. P. Fallon, O. P. Stidger, W. G. Becktell* and *Gaston Straus* were on the brief, for appellants.

A study of the provisions of the Act shows that by clause (a) of § 4, using the broadest language, the unmarried child under 18 years, or the wife, of an American citizen is a non-quota immigrant. To such it is the duty of the consular officer to issue a visa. The wife, for instance, does not have the right of entry because related to a non-quota immigrant or a non-immigrant, or because of being excepted from the operation of any other law regulating or forbidding immigration, as provided in § 5, but because she is the wife of an American citizen and her domicile is the domicile of her husband.

Under § 8 the consular officer, on satisfactory proof being furnished him that the applicant is entitled to be regarded as a non-quota immigrant, may issue an immigration visa to her.

In § 9, clause (b), any citizen of the United States claiming his wife under provisions of subdivision (a) of § 4, may file a suitable petition, and under clause (c) of the same section the Commissioner-General, finding the facts to be true and that she is entitled to be admitted to the United States as a non-quota immigrant under subdivision (a) of § 4, shall inform the Secretary of State of his decision, and the Secretary of State shall then authorize the consular officer with whom the application for the immigration visa has been filed to issue it, the only limitation upon the right to enter, consequent upon such action, being that if she seeks to enter as a non-quota immigrant she shall not do so if, on arrival, she is not found to be that sort of immigrant.

By § 13, clause (a), the Chinese wife of an American citizen has a right to admission as a non-quota immigrant if specified in the immigration visa as such and otherwise admissible under the immigration laws, the latter clause finding its natural purpose in the provisions as to health and character, of broad general nature.

We are next confronted with clause (c) of § 13, prohibiting, not the granting of visas, which in themselves recognize a right to admission, but prohibiting admission except under the provisions of sub-divisions (b), (d), and (e) of § 4 or because not an immigrant as defined in § 3.

Although the right to admission has been fully recognized three or four times over through the provisos directing the granting of visas, it is now argued that, if a visa must be granted, and such right cannot be disputed, yet the wife of an American citizen leaving China in the high hope of accompanying or joining her husband is to be

turned back on reaching an American port because "ineligible to citizenship." The two interpretations cannot stand. The right to papers authorizing admission is as strong in itself, as stated in the statute, as any power of rejection, because ineligible to citizenship, can possibly be believed to be. From the reports of the committees and the statements of the committee chairmen on the floor of the House, it is evident that Congress did not intend by this legislation to exclude from American soil the wife of any American citizen.

The only doubt arises under the Act because, while in § 13 express reference is made to subdivisions (b), (d) and (e) of § 4, by some apparent slip no reference was made to subdivision (a) of § 4 referring to the unmarried children under 18 years or the wife of a citizen of the United States.

That there was nothing but a slip and that the intent of Congress was unmistakably shown by all the prior sections to which we have alluded is only made the stronger by reference to subdivisions (d) and (e). Under (d) we find that a Buddist missionary, or a Chinese instructor may come into the United States and following his occupation remain here for the remainder of his life with his wife and children under 18 entering with or following him.

For decisions of lower courts as to right to admission of Chinese-born wives of American citizens, see *Ex Parte Goon Dip,* 1 Fed. (2d) 811; *Case of Chiu Shee,* 1 Fed. (2d) 798.

On the status of the Chinese wife of an American-born citizen before the Immigration Act of 1924, see *Tsoi Sim* v. *United States,* 116 Fed. 920; *Looe Shee* v. *North,* 170 Fed. 566; *Low Wah Suey* v. *Backus,* 225 U. S., 460; *Mackenzie* v. *Hare,* 239 U. S. 299; *Tinker* v. *Colwell,* 193 U. S. 473; *Anderson* v. *Watt,* 130 U. S. 695; *Maynard* v. *Hill,* 125 U. S. 211.

Under the law and the decisions as they stood up to July 1, 1924, there could have been no doubt as to the right of admission to the United States of the petitioners, and the burden rests upon the Government of showing that the Act manifests a clear intent to change this condition.

We should not submit this matter without strongly emphasizing the fact that the husbands of the women in whose behalf the writs of habeas corpus in these matters are sought are citizens of the United States permanently residing and domiciled therein, and that their rights as such citizens are before this Court. To hold that these women are debarred from admission to the United States under the Immigration Act of 1924 means that their husbands are to be permanently separated from them unless they abandon the country of their birth and citizenship, and take up their residence in some other land which permits their wives to reside with them.

*Mr. Assistant Attorney General Donovan*, with whom the *Solicitor General* was on the brief, for appellee.

*Mr. Henry W. Taft* filed a brief as *amicus curiae* by special leave of Court.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

Petitioners, Chang Chan and three others, claiming to be native born citizens of the United States permanently domiciled therein, sought release from detention by the Immigration Commissioner of four young Chinese women, alleged to be their lawful wives wedded in China prior to July 1, 1924. On that day the young women were on the high seas as passengers upon the President Lincoln. Arriving at San Francisco, July eleventh, without immigration visés as provided for by § 9, Immigration Act of 1924, c. 190, 43 Stat. 153, they sought and were

finally denied permanent admission. In support of this action the Secretary of Labor said—

"Neither the citizenship of the alleged husband, nor the relationship of the applicant to him, has been investigated for the reason that even if it were conceded that both elements exist she would still be inadmissible, as Section 13 of the Act of 1924 mandatorily excludes the wives of United States citizens of the Chinese race if such wives are of a race or persons ineligible to citizenship, and the Department has no alternative than to recommend exclusion."

The court below inquires, Jud. Code, § 239: "Should the petitioners be refused admission to the United States either, (a) because of the want of a visé; or (b) because of want of right of admission if found to be Chinese wives of American citizens?"

This cause involves no claim of right granted or guaranteed by treaty and is therefore radically different from *Cheung Sum Shee et al.* v. *John D. Nagle, etc.*, this day decided, *ante*, p. 336.

The excluded wives are alien Chinese ineligible to citizenship here. Rev. Stat. 2169; Act May 6, 1882, c. 126, § 14, 22 Stat. 58, 61. Notwithstanding their marriage to citizens of the United States they did not become citizens and remained incapable of naturalization.

Prior to September 22, 1922, Rev. Stat. 1994 applied. It provided—

"Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

Since that date c. 411, 42 Stat. 1021, 1022, has been in force. It provides—

SEC. 2. "That any woman who marries a citizen of the United States after the passage of this Act, or any woman whose husband is naturalized after the passage of this Act, shall not become a citizen of the United States

by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws. . . ."

Sec. 13(c), Immigration Act of 1924, declares—

"No alien ineligible to citizenship shall be admitted to the United States unless such alien (1) is admissible as a non-quota immigrant under the provisions of subdivision (b), (d), or (e) of section 4, or (2) is the wife, or the unmarried child under eighteen years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in section 3."

Subdivisions (b), (d) and (e) of § 4 apply to immigrants previously lawfully admitted, immigrants who seek to enter as religious ministers or professors, and to students. They are not controlling here. An immigrant is defined in § 3 as "any alien departing from any place outside the United States destined for the United States," with certain exceptions, none of which describes the present applicants.

Taken in their ordinary sense the words of the statute plainly exclude petitioners' wives.

We cannot accept the theory that as consular officers are required to issue visés to Chinese wives of American citizens therefore they must be admitted. A sufficient answer to this is found in § 2(g)—

"Nothing in this Act shall be construed to entitle an immigrant, to whom an immigration visa has been issued, to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under the immigration laws."

Nor can we approve the suggestion that the provisions contained in Subdivision (a)* of § 4 were omitted from

* "An immigrant who is the unmarried child under 18 years of age, or the wife, of a citizen of the United States who resides therein at the time of the filing of a petition under section 9."

the exceptions in § 13(c) because of some obvious oversight and should now be treated as if incorporated therein. Although descriptive of certain "non-quota immigrants," that subdivision is subject to the positive inhibition against all aliens ineligible to citizenship who do not fall within definitely specified and narrowly restricted classes.

In response to the demand for an interpretation of the Act which will avoid hardships and further a supposed rational and consistent policy, it suffices to refer to what we have said in *Yee Won* v. *White*, 256 U. S. 399, 401, 402; *Chung Fook* v. *White*, 264 U. S. 443, 445, 446; *Commissioner, etc.* v. *Gottlieb*, 265 U. S. 310, 314.

The applicants should be refused admission if found to be Chinese wives of American citizens. It is unnecessary now to consider the requirements of the Act in respect of visés.